

United States

Circuit Court of Appeals

For the Ninth Circuit.

GEORGE T. GOGGIN, Trustee in Bankruptcy of
the Estate of Jack Dave Sterling, Bankrupt,
Appellant,

vs.

BOLSA CHICA OIL CORPORATION, a corpo-
ration, THOS. W. SIMMONS, ALLAN A.
ANDERSON, WILLIAM H. CREE, H. H. Mc-
VICAR, C. M. ROOD and M. M. McCALLEN
CORPORATION, a corporation,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

FILED

JUN - 3 1941

PAUL P. O'BRIEN,

United States
Circuit Court of Appeals

For the Ninth Circuit.

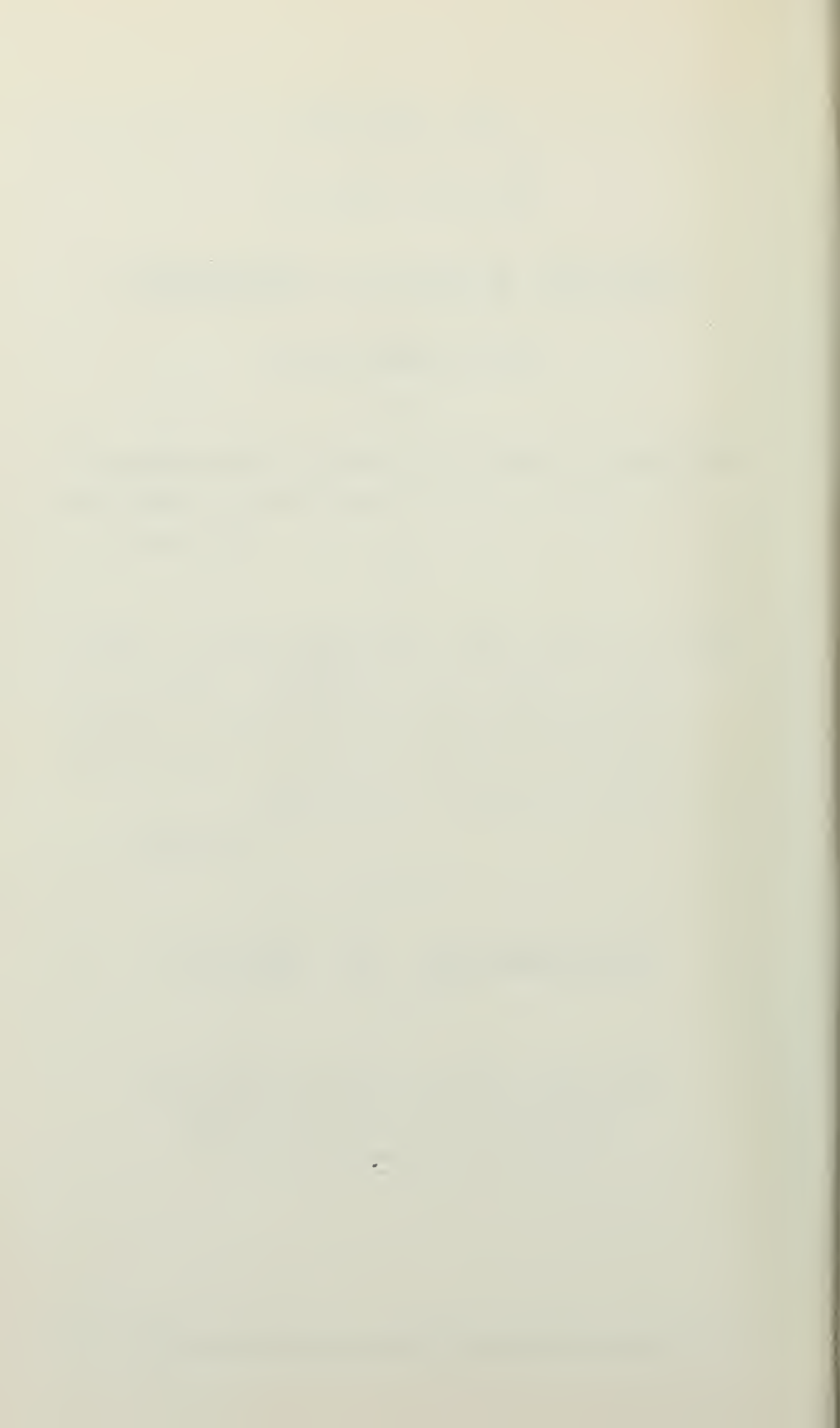
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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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and Allan A. Anderson.

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Cree, H. H. McVicar, C. M. Rood and
M. M. McCallen Corporation. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the Southern District of California, Central Division.

In Bankruptcy No. 26685-Y

Proceedings for Composition or Extension Under Section 74 of the Bankruptcy Act.

In the Matter of

JACK DAVE STERLING,

Debtor.

DEBTOR'S PETITION

To the Honorable Judges of the Above Entitled Court:

The petition of Jack Dave Sterling, of 3750 Effingham Place, Los Angeles, County of Los Angeles, State of California, Southern District, respectfully represents:

I.

That your petitioner has resided for the greater portion of six months next immediately preceding the filing of this petition at 3750 Effingham Place, Los Angeles, in the County of Los Angeles, State of California, within said judicial district.

II.

That he is unable to meet his debts as they mature and that he desires to effect a composition or extension of time to pay his debts under Section 74 of the Bankruptcy Act as amended.

III.

That your petitioner has been unable to prepare schedules containing a full, true and accurate statement of all assets and liabilities and the names and places of residence of his creditors. That said schedules are being prepared and that the same will be filed within ten days following the filing of this petition.

IV.

That for some time past your petitioner has been and now is engaged in the business of drilling for, producing, marketing and distributing oil in the Southern District of California; that petitioner has conducted said oil business through and by means of seven separate corporate organizations, the names of which are as follows: [3]

1. The Huntington Shore Oil Company;
2. Tide Petroleum Company;
3. Huntington Investment Corporation;
4. Olmstead Petroleum Corporation;
5. E. L. Olmstead Oil Company;
6. Lion Petroleum Corporation;
7. Hill Petroleum Corporation.

That said corporations are the alter ego of your petitioner; that your petitioner is the sole owner thereof and of all of the outstanding shares thereof, and that the directors and officers thereof other than your petitioner are merely nominees and trustees for your petitioner. That the assets and obligations of said companies are so interwoven that serious

injustice will result to your petitioner and the creditors of said corporations and of petitioner if said corporate entities are not disregarded. That it is the desire of your petitioner that all of said corporations, together with all the property thereof and of your petitioner be administered by the above entitled Court as a whole and that said corporate entities be disregarded.

V.

That The Huntington Shore Oil Company is the owner of a certain oil well known as The Huntington Shore Well, and Tide Petroleum Company is the owner of a certain oil well known as the Tide Well, which wells are on adjacent premises located in the Huntington Beach oil field in the County of Orange, State of California, in said Southern Dis-[4] trict of California; that said oil wells are now on production and are capable of producing one thousand (1,000) barrels of oil per day.

VI.

That said Huntington Investment Corporation is the owner of four oil wells, to-wit, Huntington Investment No. 1a, Huntington Investment No. 2, E. L. Olmstead McKenzie No. 1 and E. L. Olmstead McKenzie No. 2. Said four wells are located in the Signal Hill oil field, in the County of Los Angeles, State of California, in said Southern District of California, and are at the present time off produc-

tion. Said four wells have been involved in certain actions in the Superior Court of the State of California, in and for the County of Los Angeles, wherein certain adjoining and nearby landowners have alleged that said wells have trespassed upon and under their property; that a stipulation has been entered into in said actions that said wells will not be produced from the present location, but that the same will be surveyed and if found to trespass on other lands will be plugged back to the property from which your petitioner has the legal and lawful right to produce; that your petitioner intends that said stipulation shall be carried into effect.

VII.

That said Lion Petroleum Corporation is the owner of a certain oil well known as Lion No. 1, located in said Signal Hill oil field, which well is [5] now on production and is capable of producing approximately four hundred barrels of oil per day.

VIII.

That said Hill Petroleum Corporation is the owner of an oil lease in said Signal Hill oil field, and is now drilling thereon a well known as Hill Petroleum No. 1, which well is at a depth of approximately thirty-seven hundred (3,700) feet.

IX.

That as above set forth, all of said corporations are the alter ego of your petitioner and that their

affairs are intermingled to such an extent that a segregation thereof would be impracticable and would work a great injustice upon the creditors of your petitioner; that your petitioner is not insolvent, but is unable to meet his obligations as they mature, and that there are a great many outstanding obligations and your petitioner is now threatened with attachment and foreclosure proceedings by creditors and unless an extension of time is given your petitioner, his assets will be dissipated and wholly lost, to the irreparable injury of your petitioner and his creditors.

X.

That your petitioner's financial condition and the nature and condition of his assets and liabilities are such that the need for reorganization is essential and compelling and can best be adequately, expediently and economically effected only under the direction [6] and control of this Court; that this petition is filed in good faith and is neither collusive nor for the purpose of obtaining any preference or improper advantage for any one creditor, or any party in interest, or any class of parties in interest, over any other creditor, or any other party in interest, or any other class of parties in interest, save as such classes are lawfully entitled to such preferences, if any, by virtue of liens or securities; that this debtor is informed and believes and therefore alleges that a great majority of the

creditors desire as does your petitioner the assistance of this Court in effecting such reorganization.

XI.

That if your petitioner is left in charge and possession of his assets, he has agreed with the larger creditors that said creditors may select a creditors' committee and that said creditors' committee will supervise the operations of the debtor's property and generally control all receipts and disbursements in respect thereto, pending the submission of a plan of extension or composition by your petitioner. That your petitioner proposes only to operate said producing wells and to sell the oil therefrom, pending the meeting of creditors in the above entitled matter, and does not intend to operate said wells involved in said trespass actions as above alleged.

Wherefore, your petitioner prays that his petition be approved by the above entitled court and [7] that proceedings be had in accordance with the provisions of Section 74 of the Bankruptcy Act as amended; that pending further proceedings in the above entitled matter your petitioner prays that the above entitled Court enter an order allowing your petitioner to remain in control of the above described properties and that all creditors, marshals, sheriffs and attorneys be restrained from proceeding with any action of any character affecting your petitioner's assets, and particularly the properties described in this petition, and that your petitioner

be granted a period of ten days from the filing of this petition in which to prepare and file herein his schedules setting forth a statement of his assets and liabilities and the names and places of residences of his creditors, and that your petitioner be granted such other and further relief as may be just and proper in the premises.

JACK DAVE STERLING

Petitioner

THOMAS REYNOLDS

FRANCIS B. COBB

Attorneys for Petitioner

United States of America
Southern District of California
Central Division
State of California
County of Los Angeles—ss.

Jack Dave Sterling, being the above named debtor mentioned and described in the foregoing [8] petition, does hereby make solemn oath that the statements therein contained are true to the best of my knowledge, information and belief.

JACK DAVE STERLING

Subscribed and sworn to before me this 14th day of October, 1935.

[Seal] VINCEL GARNER

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed 1:30 Oct. 14, 1935. R. S. Zimmerman, Clerk.

[Title of District Court and Cause.]

ORDER APPROVING DEBTOR'S PETITION
UNDER SECTION 74 AND RESTRAIN-
ING ORDER.

Upon reading and filing the verified petition of Jack Dave Sterling, debtor in the above entitled matter, and it appearing therefrom that the debtor has filed a voluntary petition under Section 74 of the Bankruptcy Act, as amended, and the same having been presented to and considered by this Court, and it appearing from said petition that the debtor is a proper person and party to file a petition under said Section 74, and that he has resided in the Southern District of California, Central Division at 3750 Effingham Place, Los Angeles, California, for more than six months next preceding the filing of said petition, and it further appearing that said [9] debtor is solvent, but is unable to meet his obligations as they mature, and that he desires to effect a composition or extension of time to pay his debts, and the Court being satisfied that the petition has been filed in good faith, and having been fully advised in the premises.

Now, Therefore, on motion of Thomas Reynolds and Francis B. Cobb, attorneys for the debtor,

It Is Ordered:

1. That said petition be and it is hereby approved as having been filed in good faith, and in accordance with Section 74 of the Bankruptcy Act as amended.

2. That within ten days from the date of this Order the above named debtor file his verified schedules of his assets and liabilities, as provided by law, with the above entitled Court; and the debtor is hereby granted said period of ten (10) days from the date hereof within which to file the same.

3. That the above named debtor remain in possession and control of the properties and assets described in his petition, as well as his other property wheresoever located, pending a meeting of creditors.

4. That all persons, firms and creditors, including all creditors of the above named debtor and of the corporations named in said petition, their representatives, attorneys and servants and all sheriffs, marshals and other officers and their deputies, representatives and servants, and all other persons [10]whomsoever, be and they hereby severally are enjoined and restrained from instituting or proceeding with any suit or action of any character involving or affecting any of the assets and property described in the petition or any assets and property in the possession of or owned by the above named debtor or any of said corporations, or in which the above named debtor has an interest; and said parties are severally further enjoined from proceeding with any action now pending, or procuring the appointment of any receiver, or from taking or attempting to take into their possession any of said assets or properties, or from inter-

fering in any way with the possession thereof by the debtor.

5. That this Court reserves full right of jurisdiction to make from time to time such orders as the Court may deem proper in respect to the operation of the business of the debtor, and the fixing of a reasonable time within which claims of the respective parties may be filed and determined, and to modify or limit this order.

Dated this 14th day of October, 1935.

LEON R. YANKWICH

Judge of the above entitled court.

[Endorsed]: Filed Oct. 14, 1935. R. S. Zimmerman, Clerk. [11]

[Title of District Court and Cause.]

PETITION BY DEBTOR FOR
ADJUDICATION.

To the Honorable Leon Yankwich, Judge of the
Above Entitled Court:

The verified petition of Jack Dave Sterling respectfully shows:

I.

That he has heretofore filed a petition under Section 74 of the Bankruptcy Act as amended.

That the Court entered an order allowing your petitioner to remain in charge of his assets pending the calling of a meeting of creditors.

That your petitioner has been operating under

the supervision of a creditors' committee appointed by Earl E. Moss, Referee in said proceeding, and also under a Receivership, which receiver was appointed by the above entitled Court.

II.

That your petitioner has submitted to the larger creditors a draft of the debtor's proposal, and has had an audit made of his books and records, as well as of the corporations referred to in the debtor's original petition on file.

That your petitioner finds that the larger creditors have recovered preferences within four months prior to the filing of the proceeding. That they are unwilling to agree upon a plan whereby each of [12] them will surrender said preferences and their securities.

That your petitioner finds that he is unable to procure the agreement of the different classes of creditors in respect to the amounts and classification of their claims.

That a large amount of time has been expended in endeavoring to work out a proposal that would be acceptable to the required number of creditors. That after diligent effort your petitioner has been unable to receive any assurance that he can obtain the consent of his creditors to any proposal.

That your petitioner's creditors are demanding that they be given a day in court and that some action be taken.

III.

That your petitioner has concluded that he is helpless to proceed with a proposal that will meet the approval of his creditors, and that further delay and expense will be entailed if a hearing is had and a proposal is made which will not be approved by the required number of creditors.

That your petitioner has decided to, and does hereby petition the above entitled Court to adjudge him a bankrupt, pursuant to subdivision "1" of section 74 of the Bankruptcy Act as amended.

IV.

That your petitioner has heretofore prepared schedules as required by the Bankruptcy Act as [13] amended as to all of your petitioner's assets and liabilities, as well as the assets and liabilities of the corporations referred to in the debtor's original petition. That said corporations referred to in said petition are filing voluntary petitions in bankruptcy with the above entitled Court, in order that all of the assets may be under the custody and control of the above entitled court, and in order that the administration may be had of said assets in an equitable and economic manner.

Wherefore your petitioner prays that the above entitled Court enter an order adjudicating your petitioner to be a bankrupt pursuant to the Acts of Congress relating to Bankruptcy, as amended.

JACK DAVE STERLING

Petitioner.

FRANCIS B. COBB

Attorney for Petitioner.

United States of America
 Southern District of California
 County of Los Angeles—ss.

I, Jack Dave Sterling, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

JACK DAVE STERLING

Petitioner.

Subscribed and sworn to before me this 22nd day of November 1935.

[Seal] FRANCIS B. COBB

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Nov. 23, 1935. Earl E. Moss, Referee. Phyllis Gray, Clerk.

[Endorsed]: Filed Nov. 26, 1935. R. S. Zimmerman, Clerk.

[Title of District Court and Cause.]

ADJUDICATION AND ORDER OF
 REFERENCE

(Under Section 74 Bkey. Act)

At Los Angeles, in said District, on November 26, 1935, before said Court in Bankruptcy, the Certificate of the Referee that Jack Dave Sterling, Debtor under Section 74 of the Bankruptcy Act in the

above entitled matter should be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered, the said Jack Dave Sterling, is hereby declared and adjudged bankrupt accordingly.

It is thereupon ordered that said matter be referred to Earl E. Moss, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said Acts; and that the said Jack Dave Sterling shall attend before said referee on December 3, 1935 at his office in Los Angeles, California, at 10 o'clock a. m., and shall submit to such orders as may be made by said referee or by this Court relating to said matter in Bankruptcy.

Witness, the Honorable Wm. P. James, Judge of said Court, and the seal thereof, at Los Angeles, in said District on November 26, 1935.

R. S. ZIMMERMAN,

Clerk

By L. WAYNE THOMAS

Deputy Clerk

[Endorsed]: Filed Nov. 26, 1935. R. S. Zimmerman, Clerk. [16]

[Title of District Court and Cause.]

ORDER OF RE-REFERENCE

It appearing to the Court that E. R. Utley, Esq., has been duly appointed and has qualified as Referee in Bankruptcy for the Southern District of California to take the place of Earl E. Moss, Esq.

It Is Ordered that the above entitled cases be and they hereby are re-referred to E. R. Utley, Esq., as Referee in Bankruptcy, to take such further proceedings therein as are required by the Acts of Congress relating to bankruptcy.

Dated: Apr 1 1936

WM. P. JAMES

U. S. District Judge

[Endorsed]: Filed Apr. 1, 1936. [17]

[Title of District Court and Cause.]

APPOINTMENT OF TRUSTEE BY
CREDITORS

At Los Angeles, in said District, on the 6 day of January, 1936, before Earl E. Moss, Referee in Bankruptcy.

This being the day appointed by the Court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the Los Angeles Daily Journal, we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the

said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint Hubert F. Laugharn, of Los Angeles, in the County of Los Angeles, and State of California, to be the trustee of the said bankrupt's estate and effects, and suggest a bond in the sum of \$100,000.00.

Signature of Creditors	Amount of Debt
Oil Tool Exchange, Ind.	\$ 349.47
J. D. Rush	2,658.59
	5,658.59
Standard Pipe & Supply Co.	5,256.49
Baash-Ross Tool Co.	1,026.26
Baker Oil Tool	1,395.00

By R. Dechter

It Is Hereby Ordered that the above Appointment of Trustee be, and the same is approved, and all claims filed at or before this meeting are hereby allowed unless otherwise noted on said claims.

It Is Further ordered that before said Trustee shall take into his possession any property of this estate exceeding in value the amount of his bond as above set forth he shall file and have approved a bond equal to the value of the said property.

EARL E. MOSS

Referee in Bankruptcy

[Endorsed]: Filed Apr. 3, 1941. R. S. Zimmerman, Clerk. [18]

[Title of District Court and Cause.]

APPOINTMENT OF TRUSTEE BY
CREDITORS

At Los Angeles, in said District on the 7th day of January, 1941, before Ernest R. Utley, Referee in Bankruptcy,

Hubert F. Laugharn, Trustee herein, having filed his resignation as such trustee, and this being the day appointed by the Court, for the meeting of creditors to elect a new Trustee under the said Bankruptcy, and of which due notice has been given to the creditors and interested parties herein, we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint George Goggin, of Los Angeles, in the County of Los Angeles, and State of California, to be the trustee of the said bankrupt's estate and effects, and suggest a bond in the sum of \$25,000.00.

Signature of Creditors	Amount of Debt
Oil Well Supply Company	\$116,568.40

JOSEPH RIFKIND

Attorney for Oil Well
Supply Company.

It Is Hereby Ordered that the above Appointment of Trustee be, and the same is approved.

It Is Further Ordered that before said Trustee shall take into his possession any property of this estate exceeding in value the amount of his bond

as above set forth he shall file and have approved a bond equal to the value of the said property.

ERNEST R. UTLEY

Referee in Bankruptcy.

[Endorsed]: Filed Apr. 2, 1941. R. S. Zimmerman, Clerk. [21]

[Title of District Court and Cause.]

PETITION OF TRUSTEE IN BANKRUPTCY
FOR INSTRUCTIONS RELATIVE TO
HUNTINGTON SHORE WELL

Comes Now Hubert F. Laugharn and respectfully represents and petitions as follows:

I

That he is the duly appointed, qualified and acting Trustee in Bankruptcy in the above entitled matter.

II

That the Bolsa Chica Oil Corporation, a corporation, has commenced the redrilling of that certain oil well commonly known and designated as "Petroleum Well" at Huntington Beach, California, covered by Easement No. 290-1 granted by the State of California.

III

That petitioner is informed and believes and on that ground alleges that the proposed course of redrilling said "Petroleum Well" will cause the same to come within one hundred (100) feet of the

“Huntington Shore Well” of the above entitled bankrupt estate, which is situated on that certain real property in the County of Orange, State of California, more particularly described as follows:

Lot Two (2) in Block Three Hundred Nineteen (319) of Huntington Beach Seventeenth Street Section in the City of Huntington Beach, as per Map recorded in Book 4, Page 10 of Miscellaneous Maps, Records of said County,

covered by Easement No. 309-21 granted by the State of California. [23]

IV

That petitioner is further informed and believes and on that ground alleges that the surveys, as plotted, and their intersection with the inclined planes show that it will be impossible to redrill the “Petroleum Well” without coming within one hundred (100) feet of the oil sands perforated by and from which production is obtained by the “Huntington Shore Well”, particularly at thirty-seven hundred (3700) feet, thirty-eight hundred (3800) feet, thirty-nine hundred (3900) feet and four thousand (4000) feet, and thereby causing infiltration of oil, mud, cement and other foreign substances, and that the same will result in irreparable damage to and possible loss of said “Huntington Shore Well”.

V

That said “Huntington Shore Well” was placed on production on August 15, 1937. The average daily production for the past twelve (12) months has been approximately two hundred ninety-five

(295) barrels per day. The estimated value of said well is Three Hundred Fifty Thousand (\$350,000.00) Dollars. That attached hereto and made a part hereof is an affidavit of Vernon L. King, a geologist and petroleum engineer who was employed in connection with the redrilling of the "Huntington Shore Well" and as such, is familiar with the underground course and oil sands from which said "Huntington Shore Well" is producing. That attached hereto and made a part hereof is also an affidavit of Jack Dave Sterling, under whose direction the "Huntington Shore Well" was redrilled and who, because of his many years of practical experience in the oil business, together with his familiarity by reason of the redrilling of the said "Huntington Shore Well", is familiar with the conditions thereof.

Wherefore, your petitioner, by reason of the value of said well and the irreparable loss and damage which will probably result thereto by reason of the redrilling of the said [24] "Petroleum Well", desires that the court give instructions to said petitioner as to the action and proceedings which should be taken by the Trustee in Bankruptcy in the matter.

HUBERT F. LAUGHARN

Trustee in Bankruptcy

JOSEPH J. RIFKIND and
RAPHAEL DECHTER

By JOSEPH J. RIFKIND

By.....

Attorneys for Trustee in Bankruptcy

United States of America
 Southern District of California
 Central Division—ss.

Hubert F. Laugharn, being by me duly sworn, deposes and says: that he is the Petitioner in the above entitled action; that he has read the foregoing Petition of Trustee in Bankruptcy for Instructions Relative to Huntington Shore Well and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

HUBERT F. LAUGHARN

Subscribed and sworn to before me this 20th day of April, 1940.

[Seal]

PHYLLIS GRAY

Notary Public in and for the County of Los Angeles, State of California. [25]

[Title of District Court and Cause.]

AFFIDAVIT OF VERNON L. KING IN CONNECTION WITH PETITION OF THE THE TRUSTEE IN BANKRUPTCY FOR INSTRUCTIONS RELATIVE TO HUNTINGTON SHORE WELL.

State of California
 County of Los Angeles—ss.

Vernon L. King, being first duly sworn, deposes and says:

That he is and for the past twenty-three (23) years has been a geologist and petroleum engineer; that for the past twelve (12) years he has been a consulting engineer in Southern California; that he acquired his education as a geologist and petroleum engineer at Department of Mining and Geology of Stanford University and graduated therefrom in 1917.

That affiant has made an examination and analysis of the surveys, plats, courses, charts and other data which is on file with the Division of Lands of the State of California showing the course of the Petroleum Well at Huntington Beach, California, covered by Easement No. 290-1 granted by the State of California, which is and for several months last past has been off production and which the Bolsa Chica Oil Corporation has commenced to redrill.

That affiant has also made an examination and analysis of the plats, courses, charts and other data which is on file with the Division of Lands of the State of California showing the course of the Huntington Shore Well at Huntington Beach, California, covered [26] by Easement No. 309-2a, granted by the State of California.

That the surveys of said wells are made by independent and impartial experts and technicians engaged and specializing in surveying and plotting the underground courses of oil wells. That affiant was the consulting geologist and petroleum engineer employed in connection with the redrilling of the Huntington Shore Well, and as such is intimately

familiar with the underground course and oil sands from which said Huntington Shore Well is producing.

That the surveys, as plotted, and their intersection with the inclined planes, show, in affiant's opinion, that it will be impossible to redrill the Petroleum Well without coming within one hundred (100) feet of the oil sands perforated by and from which production is obtained by the Huntington Shore Well, particularly at thirty-seven hundred (3700) feet, thirty-eight hundred (3800) feet, thirty-nine hundred (3900) feet and four thousand (4000) feet, and thereby, in affiant's opinion, causing infiltration of oil, mud, cement and other foreign substances which will, in affiant's opinion, result in irreparable damage to, if not possibly the loss of, the well.

That the Bolsa Chica Oil Corporation commenced the redrilling of said Petroleum Well or or about April 15, 1940. That said Huntington Shore Well is drilled at an angle into the tidelands of the State of California under easement, as previously stated, and for that reason any change in the gas pressure or shifting of underlying oil sands makes remedial work exceedingly difficult and extremely hazardous.

That said Huntington Shore Well was placed on production on August 15, 1937, the average daily production of said Huntington Shore Well, for the past twelve (12) months, has been approximately two hundred ninety-five (295) barrels per day, that the fair and [27] reasonable value of said Hunting-

ton Shore Well, in affiant's opinion, is approximately Three Hundred Fifty Thousand (\$350,000.00) Dollars.

VERNON L. KING

Subscribed and sworn to before me this 18th day of April, 1940.

[Seal]

HERTHA N. EBERT

Notary Public in and for the County of Los Angeles, State of California. [28]

[Title of District Court and Cause.]

AFFIDAVIT OF JACK DAVE STERLING IN
CONNECTION WITH PETITION OF
TRUSTEE IN BANKRUPTCY FOR IN-
STRUCTIONS RELATIVE TO HUNTING-
TON SHORE WELL

State of California

County of Los Angeles—ss.

Jack Dave Sterling, being first duly sworn, deposes and says:

That he has been engaged in the oil business in Southern California for the past 8 years; that the "Huntington Shore Well" of the above entitled bankrupt estate was originally drilled and thereafter redrilled under the direction and supervision of affiant; that in addition to the personal knowledge of the course and formations through which said "Huntington Shore Well" was drilled, affiant has made *and* examination of plats, course charts

and other data showing the course of the "Huntington Shore Well" at Huntington Beach, California, covered by Easement No. 309-2a granted by the State of California, and also of the course of "Petroleum Well" at Huntington Beach, California, covered by Easement No. 290-1 granted by the State of California.

That from affiant's personal knowledge of the course and formations through which said "Huntington Shore Well" was drilled and confirmed by his examination and analysis of plats, course charts and other data examined by him in connection with the "Huntington Shore Well" and the "Petroleum Well", it is affiant's opinion that [29] said "Petroleum Well" cannot be redrilled without coming within one hundred (100) feet of the oil sands perforated by and from which production is obtained by the "Huntington Shore Well", and it is affiant's further opinion that the redrilling of the "Petroleum Well" will cause infiltration of oil, mud, cement and other foreign substances in the "Huntington Shore Well", resulting in irreparable damage to and possible entire loss of said "Huntington Shore Well."

That the "Huntington Shore Well" was placed on production on August 15, 1937; that the average daily production of said "Huntington Shore Well" for the past twelve (12) months has been approximately two hundred ninety-five (295) barrels per day; that the fair and reasonable value of said "Huntington Shore Well" is, in affiant's

opinion, approximately Three Hundred Fifty Thousand (\$350,000.00) Dollars.

JACK DAVE STERLING

Subscribed and sworn to before me this 19th day of April, 1940.

[Seal] BEATRICE M. FOREMASTER
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Apr. 20, 1940. Ernest R. Utley, Referee, By Blanche Morris, Clerk.

[Endorsed]: Filed Jan. 30, 1941. R. S. Zimmerman, Clerk. By Louis J. Somers, Deputy Clerk.

[30]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE ON PETITION OF
TRUSTEE IN BANKRUPTCY FOR IN-
STRUCTIONS RELATIVE TO HUNTING-
TON SHORE WELL

Upon reading the verified petition of Hubert F. Laugharn, as Trustee in Bankruptcy in the above entitled matter, together with the affidavit of Vernon L. King, geologist and petroleum engineer, and the affidavit of Jack Dave Sterling, and good cause appearing therefrom,

It Is Ordered that the Bolsa Chica Oil Corporation, a corporation, be and appear before Honorable Ernest R. Utley, Referee in Bankruptcy, 327 Federal Building, Temple and Spring Streets, Los An-

geles, California, on the 26 day of April, 1940, at 2 o'clock P. M., then and there to show cause, if any it has, why such order or orders should not be made and entered by the above entitled court in the above entitled matter to protect the "Huntington Shore Well" of the above entitled bankrupt estate from damage resulting from the redrilling of the "Petroleum Well", and why such additional further and future order or orders should not be made and entered authorizing the Trustee in Bankruptcy to institute, maintain and prosecute any action, proceedings or suit in this or any other court which may, in the opinion of the Trustee in Bankruptcy, be necessary or advisable to protect the "Huntington Shore Well" from damage as the result of the redrilling of the "Petroleum Well."

It Is Further Ordered by the above entitled court, [31] that a copy of the petition of Hubert F. Laugharn, as Trustee in Bankruptcy, and the affidavit of Vernon L. King and the Affidavit of Jack Dave Sterling, be served concurrently with the service of this order.

Dated: April 20, 1940.

ERNEST R. UTLEY

Referee in Bankruptcy

[Endorsed]: Filed Apr. 20, 1940. Ernest R. Utley, Referee. Blanche Morris, Clerk.

[Endorsed] Filed Jan. 30, 1941. R. S. Zimmerman, Clerk. By Louis J. Somers, Deputy Clerk.

[32]

[Title of District Court and Cause.]

INJUNCTION AGAINST BOLSA CHICA OIL
CORPORATION, ET AL.

The verified petition of Hubert F. Laugharn, as Trustee in Bankruptcy in the above entitled matter, and the order to show cause issued thereon directed to the Bolsa Chica Oil Corporation, a corporation, came on regularly for hearing before Hon. Ernest R. Utley, Referee in Bankruptcy, on April 26, 1940, at two o'clock P. M. and after being partially heard on said date, was continued for further hearing to and the hearing thereof was concluded on May 1, 1940, at two o'clock P. M. The Trustee in Bankruptcy appeared through and was represented by Joseph J. Rifkind and Raphael Dechter, his attorneys, and the Bolsa Chica Oil Corporation, a corporation, appeared through and was represented by Cecil A. Borden and Warren S. Pallette, of Overton, Lyman & Plumb, its attorneys. The Bolsa Chica Oil Corporation, upon the calling of the matter, announced that it was appearing specially for the sole purpose of objecting to the jurisdiction of the court to make any order affecting said corporation; that thereupon the court informed counsel that it would withhold ruling upon the question of jurisdiction until sufficient evidence was introduced to determine the question; that oral and documentary evidence was introduced upon the part of the Trustee in Bankruptcy and the witnesses called on behalf of the Trustee in Bankruptcy were cross-

examined by the attorneys for the Bolsa Chica Oil Corporation; the Bolsa Chica Oil Corporation, having at the conclusion of the introduction of oral and documentary evidence upon behalf of the Trustee in Bankruptcy, [33] stipulated in open court to the granting of the injunction as hereinafter more particularly set forth, the Bolsa Chica Oil Corporation stating that such stipulation was subject to the objection to the jurisdiction of the court and that such stipulation was not intended to confer general jurisdiction on the court; the court having been fully advised in the premises and the court having overruled the objection of Bolsa Chica Oil Corporation to the jurisdiction of the court,

It Is, Therefore, Ordered as Follows:

That the Bolsa Chica Oil Corporation, its superintendent, agents and employees, shall be and they hereby are restrained and enjoined from drilling, re-drilling or sidetrackings its "Petroleum Well", also known as "Fee No. 1 Well", at Huntington Beach, California, so that it comes closer than 200 feet from the "Huntington Shore Well" of said bankrupt estate, measured on a horizontal plane, at any point below the depth of 3800 feet below sea level as the course of the "Huntington Shore Well" is shown on the plat or chart offered and received in evidence and marked Trustee's Exhibit 5.

That in determining whether such drilled, re-drilled or sidetracked portion of "Petroleum Well", also known as "Fee No. 1 Well", approaches within 200 feet of the "Huntington Shore Well" shall

be conclusive as to the parties as the same is delineated on said plat and the distance therefrom shall be conclusively determined by plotting the course of the drilled, redrilled or sidetracked portion of said "Fee No. 1 Well" on said plat, based upon single shot surveys taken during the course of the drilling, redrilling or sidetracking of the "Petroleum Well", also known as "Fee No. 1 Well", at approximately every 100 feet, which single shot surveys shall be made available to the Trustee in Bankruptcy or his representatives as the same are from time to time taken and made. [34]

That the circulating fluid used in drilling, redrilling or sidetracking of said "Petroleum Well", also known as "Fee No. 1 Well", shall be virgin crude oil maintained at a grade and gravity consistent with good oil practice in said field, and that no mud or other foreign substances of any kind shall be used in lieu or as part of such circulating fluid, provided that a substitute circulating fluid may be used as may be mutually agreed to in writing between the petroleum engineers for the respective parties thereto.

That there shall be no cementing of said "Petroleum Well", also known as "Fee No. 1 Well", nor shall any cement be used in connection with the drilling, redrilling or sidetracking thereof unless written consent is first obtained from the petroleum engineer representing the Trustee in Bankruptcy, provided that if the petroleum engineer for the parties cannot agree as to whether such proposed cementing will be detrimental to the "Huntington

Shore Well" or not, then and in that event the matter may, upon notice to the respective parties, be submitted for determination at a hearing before the Division of Oil and Gas of the State of California.

That nothing in this order is intended to nor shall any provision of this order preclude or in any manner whatsoever impair the right of the Trustee in Bankruptcy to institute, maintain or prosecute any plenary action, proceeding or suit in any court of competent jurisdiction concurrently, consecutively or cumulatively for injunctive relief or to recover any damages which may be sustained by the "Huntington Shore" by reason of the drilling, redrilling or sidetracking of the "Petroleum Well", also known as "Fee No. 1 Well."

Dated this 15th day of May, 1940.

ERNEST R. UTLEY

Referee in Bankruptcy [35]

Approved as to Form and Contents:

JOSEPH J. RIFKIND and

RAPHAEL DECHTER

By JOSEPH J. RIFKIND

Attorneys for Trustee in Bankruptcy

OVERTON; LYMAN & PLUMB

By CECIL A. BORDEN

Attorneys for Bolsa Chica Oil
Corporation, a corporation.

[Endorsed]: Filed May 15, 1940. Ernest R. Utley, Referee. Phyllis Gray, Clerk.

[Endorsed]: Filed Dec. 31, 1940, 12:03 P. M. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [36]

[Title of District Court and Cause.]

PETITION TO HAVE BOLSA CHICA OIL CORPORATION, ET AL., CERTIFIED FOR CONTEMPT, ETC.

Comes now Hubert F. Laugharn and respectfully represents and petitions as follows:

I.

That he is the duly appointed, qualified and acting trustee in bankruptcy in the above entitled matter. That one of the assets of said bankrupt estate is that certain oil well commonly known and designated as "Huntington Shore Well" situated in the County of Orange, State of California, and more particularly described as follows:

Lot Two (2) in Block Three Hundred Nineteen (319) of Huntington Beach Seventeenth Street Section in the City of Huntington Beach, as per Map recorded in Book 4, Page 10 of Miscellaneous Maps, Records of said County, and covered by Easement No. 309-2A granted by the State of California.

II.

That heretofore and pursuant to the hearing of a verified petition filed by the trustee in bankruptcy and the Order to Show Cause issued thereon, an injunction was granted on May 15, 1940, against the Bolsa Chica Oil Corporation, its superintendent, agents and employees providing "that

the circulating fluid used in the drilling, redrilling or side-tracking of its "Petroleum Well", also known as "Fee No. 1 Well", shall be virgin crude oil maintained at a grade and gravity consistent with good oil practice in said field and that no [37] mud or other foreign substances shall be used in lieu of or as part of said circulating fluid, provided that a substitute circulating fluid may be used as may be mutually agreed to in writing between the petroleum engineers for the respective parties thereto."

III.

That the trustee in bankruptcy has been informed by Jack Dave Sterling, who is in charge of the operation of said "Huntington Shore Well", that redrilling operations have been resumed on the said "Petroleum Well", also known as "Fee No. 1 Well", and that mud is being used as a circulating fluid in the redrilling in direct violation of said injunction heretofore issued. That a copy of said injunction was served upon the Bolsa Chica Oil Corporation and its attorneys in said proceedings and a notice of the entry of said injunction against the Bolsa Chico Oil Corporation was served on or about May 17, 1940. That no petition for review was filed and no appeal was taken from the entry and issuance of said injunction within the time provided by law or otherwise, or at all, and that said injunction now is and for several months last past has been final and in full force and effect.

IV.

That some agreement or arrangement has been entered into by and between the Bolsa Chica Oil Corporation, McVicar Rood, Inc., a corporation, M. M. McCullum Corporation, a corporation, H. H. McVicar, C. M. Rood, M. M. McCullum, Thomas W. Simons, "John Doe" Anderson, and Warren S. Palette and William H. Cree, their attorneys, as a subterfuge, scheme and device to circumvent, evade and escape the force and effect of said injunction, and redrilling operations upon said "Petroleum Well", also known as "Fee No. 1 Well", have been or are about to be resumed with the use of mud as a circulating fluid in violation of said injunction heretofore issued and in force and affect.

V.

That the trustee in bankruptcy is of the opinion and be- [38] lieves and therefore states that the value of said "Huntington Shore Well" is \$350,000.00. That prior to the commencement of the redrilling operations by the Bolsa Chica Oil Corporation of its "Petroleum Well", also known as "Fee No. 1 Well", that said "Huntington Shore Well" had produced an average daily production over a period of twelve (12) months for the past twelve (12) months preceding the redrilling of said "Petroleum Well", also known as "Fee No. 1 Well", of 296 barrels per day. That as a result of the redrilling operation by the Bolsa Chica Oil

Corporation of its "Petroleum Well", also known as "Fee No. 1 Well", it was necessary to shut down the operation of the "Huntington Shore Well" because of the infiltration of the mud which was being used by the Bolsa Chica Oil Corporation in its redrilling and a column of mud stood in the "Huntington Shore Well" ranging from 1900 feet to 3600 feet, that it was necessary for the trustee in bankruptcy to pull, bale, wash and incur other expenditures for material and labor in an endeavor to preserve and protect the said "Huntington Shore Well" from the damage resulting from the infiltration of said mud used as a circulating fluid in such redrilling, and the trustee in bankruptcy has heretofore sustained damages as a result of the loss of production and remedial work of approximately \$10,000.00 and will continue to sustain further damages and loss with the probability of said well being irreparably damaged or injured unless the use of mud as a circulating fluid in said redrilling of said "Petroleum Well", also known as Fee No. 1 Well", is permanently restrained, prohibited and enjoined.

Wherefore, the trustee in bankruptcy prays that Bolsa Chica Oil Corporation, McVicar-Rood, Inc., a corporation, M. M. McCullum Corporation, a corporation, H. H. McVicar, C. M. Rood, M. M. McCullum, Thomas W. Simmons, "John Doe" Anderson, William H. Cree and Warren S. Palette be certified for contempt to the United States District [39] Court for violating and aiding and abetting in

the violation of said injunction and that in addition thereto, or in the alternative thereof, that the injunction heretofore issued be modified and extended to include each and all of said persons, their agents, servants, employees, successors and assigns, and that pending the hearing of said Order to Show Cause that said persons, and each of them, their agents, servants, employees, successors and assigns, be restrained and enjoined from using of mud as a circulating fluid in the redrilling of said "Petroleum Well", also known as "Fee No. 1 Well".

HUBERT F. LAUGHARN,
Trustee in Bankruptcy.

JOSEPH J. RIFKIND and
RAPHAEL DECHTER,
By JOSEPH J. RIFKIND,
Attorneys for Trustee.

United States of America,
Southern District of California,
Central Division—ss.

Hubert F. Laugharn, being by me first duly sworn, deposes and says: that he is the Trustee in Bankruptcy in the above entitled action; that he has read the foregoing Petition to Have Bolsa Chica Oil Corporation, et al. Certified for Contempt, Etc., and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon

information or belief, and as to those matters he believes it to be true.

HUBERT F. LAUGHARN

Subscribed and sworn to before me this 22nd day of August, 1940.

[Seal]

MEREDITH KEITH,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Aug. 22, 1940 at 30 min. past 4 o'clock P. M. Ernest R. Utley, Referee. Meredith Keith, Clerk.

[Endorsed]: Filed Dec. 31, 1940—12:03 P. M. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [40]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE ON PETITION TO HAVE BOLSA CHICA OIL CORPORATION, ET AL., CERTIFIED FOR CONTEMPT, ETC.

Upon reading the verified petition filed by Hubert F. Laugharn as trustee in bankruptcy in the above entitled matter, and good cause appearing therefrom,

It Is Ordered that Bolsa Chica Oil Corporation, McVicar-Rood, Inc., a corporation, M. M. McCullum Corporation, a corporation, H. H. McVicar, C. M. Rood, M. M. McCullum, Thomas W. Simmons, "John Doe" Anderson, and William H. Cree and Warren S. Palette be

and appear before Hon. Ernest R. Utley, Referee in Bankruptcy, Room 324, Federal Building, Los Angeles, California, on the 30th day of August, 1940, at 10:00 o'clock A. M., then and there to show cause why they and each of them should not be certified to the United States District Court for contempt for violating or aiding or abetting in the violation of the injunction issued against the Bolsa Chica Oil Corporation, et al., on May 15, 1940, in the above entitled matter.

It Is Further Ordered that said persons, and each of them, show cause at said time and place, if any they have, why the said injunction should not be modified, amended and supplemented to include said persons and each of them, and that pending the hearing of this order to show cause, said persons, each and all of them, their agents, servants, employees, successors and assigns be and they are hereby restrained, prohibited and enjoined from using mud as a circulating fluid in the redrilling of the "Petroleum Well", also known as "Fee No. 1 Well", at Huntington Beach, California.

Dated this 22 day of August, 1940.

ERNEST R. UTLEY,

Referee in Bankruptcy. [41]

[Endorsed]: Filed Aug. 22, 1940, at 30 min. past 4 o'clock PM. Ernest R. Utley, Referee. Meredith Keith, Clerk.

[Endorsed]: Filed Dec. 31, 1940, 12:03 PM. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [42]

[Title of District Court and Cause.]

PETITION FOR AUTHORITY TO INSTITUTE
SUIT AGAINST BOLSA CHICA OIL COR-
PORATION.

Comes now Hubert F. Laugharn and respectfully represents and petitions as follows:

I.

That he is the duly appointed, qualified and acting trustee in bankruptcy in the above entitled matter. That one of the assets of said bankrupt estate is that certain oil well commonly known and designated as the "Huntington Shore Well", at Huntington Beach, California. That on or about the 15th day of April, 1940, the Bolsa Chica Oil Corporation commenced the redrilling of its "Petroleum Well", also known as "Fee No. 1 Well", at Huntington Beach, California. That as a result of the infiltration of mud which was being used by the Bolsa Chica Oil Corporation in the redrilling of its said well, it was necessary to shut down the operation of said "Huntington Shore Well" and to pull, bale, wash and incur other expenditures for material, labor and technical assistance in endeavoring to preserve and protect said well from damage and in an endeavor to repair, remove and remedy the damage sustained as a result of the redrilling operations as aforesaid.

II.

That the trustee in bankruptcy has heretofore sustained as a result of said damages from said re-drilling operations on account of loss of production and remedial work the sum of approximately \$12,540.00, and the trustee in bankruptcy will continue to sustain [43] loss and damage as a result of the permanent and irreparable diminution of production from said well as a result of said re-drilling operations estimated at approximately \$250,000.00. That a copy of the proposed complaint for damages against the Bolsa Chica Oil Corporation, which the trustee in bankruptcy intends to file upon receiving authority so to do, is attached hereto.

Wherefore, the trustee in bankruptcy prays that he be authorized and empowered to institute action against the Bolsa Chica Oil Corporation for the recovery of the damages sustained and to be sustained by the "Huntington Shore Well" resulting from said re-drilling operations as aforesaid and to incur at the expense of the bankrupt estate all costs, charges and expenses arising out of, incidental to and connected with the said litigation.

HUBERT F. LAUGHARN

Trustee in Bankruptcy

JOSEPH J. RIFKIND and

RAPHAEL DECHTER

By JOSEPH J. RIFKIND

Attorneys for Trustee in Bankruptcy

United States of America
Southern District of California
Central Division—ss.

Hubert F. Laugharn, being by me first duly sworn, deposes and says: that he is the Petitioner in the above entitled action; that he has read the foregoing Petition for Authority to Institute Suit Against Bolsa Chica Oil Corporation, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

HUBERT F. LAUGHARN

Subscribed and sworn to before me this 20th day of September, 1940.

[Seal] MEREDITH KEITH

Notary Public in and for the County of Los Angeles, State of California. [44]

In the Superior Court of the State of California in
and for the County of Los Angeles

No.

HUBERT F. LAUGHARN, as Trustee in Bankruptcy in the Matter of Jack Dave Sterling, Bankrupt,

Plaintiff,

vs.

BOLSA CHICA OIL CORPORATION, a corporation, ONE DOE, TWO DOE, THREE DOE, FOUR DOE, FIVE DOE COMPANY, a Corporation, and SIX DOE COMPANY, a corporation,

Defendants.

COMPLAINT FOR DAMAGES

Comes now the plaintiff and for the first cause of action against the defendants complains and alleges:

I.

That plaintiff is the duly elected, qualified and acting Trustee in Bankruptcy in the Matter of Jack Dave Sterling, Bankrupt, pending in the District Court of the United States, Southern District of California, Central Division, In Bankruptcy Consolidated Cause No. 26685-Y.

That said plaintiff was, pursuant to an order made and entered in said bankruptcy proceedings, authorized and empowered to institute, maintain and prosecute this action against said defendants.

II.

That the Bolsa Chica Oil Corporation is a corporation [45] organized and existing under and pursuant to the laws of the State of California with its principal office in the County of Los Angeles, within said state. That the defendants Five Doe Company and Six Doe Company are corporations organized and existing.

That the defendants One Doe, Two Doe, Three Doe, Four Doe, Five Doe Company, a corporation, and Six Doe Company, a corporation, are sued herein under fictitious names for the reason that the true names of said defendants are unknown to the plaintiff and plaintiff will ask leave of court to substitute the true names or said defendants when the same are ascertained.

III.

That Hubert F. Laugharn, as trustee in bankruptcy, was at all times hereinafter mentioned and now is the owner of that certain oil well commonly known as designated as the "Huntington Shore Well", drilled upon the real property in the County of Orange and State of California, more particularly described as follows:

Lot Two (2) in Block Three Hundred Nineteen (319) of Huntington Beach Seventeenth Street Section in the City of Huntington Beach, as per Map recorded in Book 4, Page 10 of Miscellaneous Maps, Records of said County.

IV.

That the Bolsa Chica Oil Corporation was at all times herein mentioned the owner of and in charge of the redrilling operations upon that certain oil well commonly known and designated as "Petroleum Well", also sometimes known as "Fee No. 1 Well", drilled upon that certain real property situated in the County of Orange and State of California, more particularly described as follows:

Lots Twenty (20) and Twenty-two (22) in Block One Hundred Nineteen (119) of the Huntington Beach Seventeenth Street Section in the City of Huntington Beach, as per Map recorded in Book 4, Page 10 of Miscellaneous Maps, records of said County. [46]

V.

That on or about the 15th day of April, 1940, the Bolsa Chica Oil Corporation commenced the re-drilling of its said "Petroleum Well", also known as "Fee No. 1 Well", which was at that time and had for more than six months next preceding said date been off production. That as the direct and proximate result of the redrilling operations upon said "Petroleum Well", also known as "Fee No. 1 Well", carried on by the Bolsa Chica Oil Corporation mud, sand and other foreign substances infiltrated through the oil sands and were forced up and into the "Huntington Shore Well", owned by plaintiff. That as the direct and proximate result of a column of 3600 feet of mud, sand and other

foreign substances being forced up and into the "Huntington Shore Well" caused by the redrilling operations carried on by the Bolsa Chica Oil Corporation, plaintiff was compelled to and did shut down and suspend operations of the said "Huntington Shore Well" for a period of twenty (20) days from June 7, 1940 to June 27, 1940, while pulling, baling, cleaning, washing and other work was being carried on to remove the mud, sand and other foreign substances forced up and into said well.

VI.

That at the time of the commencement of said redrilling operations by the Bolsa Chica Oil Corporation the said "Huntington Shore Well" was producing 265 barrels of clean oil per day. That as the direct and proximate result of the infiltration and forcing of mud, sand and other foreign substances through the oil sands up and into the "Huntington Shore Well" caused by the redrilling operations of the Bolsa Chica Oil Corporation, when said "Huntington Shore Well" was again placed upon production on or about June 27, 1940, it produced 168 barrels of oil per day.

VII.

That the damage to plaintiff resulting from the loss of oil at 265 barrels per day computed at ninety (90) cents per barrel, which was the fair and reasonable market value of oil of said grade and [47] gravity in said field at said period and the

price which plaintiff would have received for said oil during said time, amounted to \$4,770.00; that the damage to plaintiff as the result of twenty (20) days loss from wet and dry gas, computed upon the fair, reasonable and market value thereof and the price which plaintiff would have received therefor, amounted to \$248.00; that the damage sustained by plaintiff for the period from June 27, 1940 to September 1, 1940, as the result of the decline of oil produced during said period computed upon the fair and reasonable market value thereof and the price plaintiff would have received therefor, amounted to 3700 barrels of oil at ninety (90) cents per barrel, or \$3,330.00; that the damage sustained by plaintiff for the period from June 27, 1940 to September 1, 1940, as the result of the decline of proceeds from wet and dry gas amounted to \$550.00; that the damage sustained to plaintiff on account of money expended and obligations incurred for pulling, baling, washing and other material, labor and technical assistance in the removal of the mud, sand and other foreign substances which had infiltrated and had been forced up and into said well amounted to \$3,642.00, all to plaintiff's aggregate damage to September 1, 1940 of \$12,540.00. That no part of said damages have been paid and the whole thereof is due, owing and unpaid.

VIII.

That in addition thereto, the production of oil and gas from said "Huntington Shore Well" has been

permanently and perpetually diminished and decreased for the balance of the life of said well to plaintiff's further damage in the sum of \$250,000.00. That no part of said damage has been paid and the whole thereof is now due, owing and unpaid.

Comes now the plaintiff and for a second cause of action against defendants complains and alleges:

[48]

I.

Plaintiff adopts Paragraphs I, II, III and IV. of his first cause of action as Paragraph I. of this, his second cause of action.

II.

That on or about the 15th day of April, 1940, the Bolsa Chica Oil Corporation commenced the re-drilling of its said "Petroleum Well", also known as "Fee No. 1 Well", which was at that time and had for more than six months immediately preceding said date been off production. That as the direct and proximate result of the careless, negligent and unskillful operation, control and management of the Bolsa Chica Oil Corporation during the re-drilling of said well, mud, sand and other foreign substances were forced through the oil sands up and into the "Huntington Shore Well". That as the direct and proximate result of the careless, negligent and unskillful operation, control and management of the Bolsa Chica Oil Corporation during the re-drilling of said well, mud, sand and other

foreign substances were forced up and into said "Huntington Shore Well" forming a column 3600 feet high so that said "Huntington Shore Well" became mudded, sanded and clogged, resulting in the cessation of operations for a period of twenty (20) days from June 7, 1940 to June 27, 1940.

III.

That as the direct and proximate result of the careless, negligent and unskillful operation, management and control of the Bolsa Chica Oil Corporation, it was necessary for the plaintiff to pull, bale, wash, and incur other expenditures for material, labor and technical assistance in removing the mud, sand and other foreign substances from said "Huntington Shore Well" in order to restore said well to production. That as the direct and proximate result of the careless, negligent and unskillful operation, control and management of the Bolsa Chica Oil Corporation the plaintiff has sustained damages resulting from the loss of production oil and gas and remedial work in restoring the said "Huntington Shore Well" to September 1, 1940, [49] of \$12,540.00. That no part of said damages has been paid and the whole thereof is now due, owing and unpaid.

IV.

That prior to the commencement of the redrilling operations by the Bolsa Chica Oil Corporation the said "Huntington Shore Well" was producing 265 barrels of clean oil per day and the proceeds from

wet and dry gas amounted to \$328.00 per month. That as the direct and proximate result of the careless, negligent and unskillful operation, management and control of the Bolsa Chica Oil Corporation during such redrilling operations the production of oil from said "Huntington Shore Well", when said well was replaced upon production, had decreased to 168 barrels per day and the income of wet and dry gas had decreased to \$154.00 per month. That as the direct and proximate result of said careless, negligent and unskillful operation, management and control of Bolsa Chica Oil Corporation during said redrilling operations the said "Huntington Shore Well" has become and is irreparably and permanently damaged in that the production of said "Huntington Shore Well" has been diminished and reduced and plaintiff has thereby sustained additional damages due to the loss of future production from said "Huntington Shore Well" to his further damage in the sum of \$250,000.00. That no part of said damages has been paid to plaintiff and the whole is now due, owing and unpaid.

Wherefore, plaintiff prays judgment against the defendants for the sum of \$262,540.00, together with the costs of suit incurred herein.

JOSEPH J. RIFKIND and
RAPHAEL DECHTER,
By JOSEPH J. RIFKIND,

Attorneys for Trustee in
Bankruptcy. [50]

State of California,
County of Los Angeles—ss.

Hubert F. Laugharn, being by me first duly sworn, deposes and says: that he is the Plaintiff in the above entitled action; that he has read the foregoing Complaint for Damages and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

HUBERT F. LAUGHARN

Subscribed and sworn to before me this.....day
of September, 1940.

.....
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Petition for Authority to Institute Suit Against Bolsa Chica Oil Corporation—filed Sep. 20, 1940. Ernest R. Utley, Referee.

[Endorsed]: Filed Apr. 2-1941. R. S. Zimmerman, Clerk. [51]

—————
[Title of District Court and Cause.]

ORDER AUTHORIZING SUIT AGAINST
BOLSA CHICA OIL CORPORATION.

Upon reading the verified petition of Hubert F. Laugharn, the trustee in bankruptcy in the above entitled matter, for authority to institute suit

against the Bolsa Chica Oil Corporation for the recovery of damages sustained by the "Huntington Shore Well" owned and operated by the bankrupt estate as a result of the redrilling operations carried on by the Bolsa Chica Oil Corporation in connection with its "Petroleum Well", also known as "Fee No. 1 Well", at Huntington Beach, California, and good cause appearing therefor,

It Is Ordered that Hubert F. Laugharn, as trustee in bankruptcy in the above entitled matter, be and he is hereby authorized and empowered to institute, prosecute and maintain any action, proceeding or suit against the Bolsa Chica Oil Corporation which said trustee in bankruptcy may deem necessary, proper and advisable to recover from the Bolsa Chica Oil Corporation any and all damages sustained or which may hereafter be sustained to the "Huntington Shore Well" of said bankrupt estate as the result of the operations carried on by the Bolsa Chica Oil Corporation in connection with the redrilling of its "Petroleum Well", also known as "Fee No. 1 Well", at Huntington Beach, California.

It Is Further Ordered that Hubert F. Laugharn, as trustee in bankruptcy in the above entitled matter, be and he is hereby authorized and empowered to pay from the proceeds of said bankrupt [52] estate all of the costs, expenses and charges which may be incurred in connection with the institution, maintenance and prosecution of any such action which may be instituted, including any mo-

tion for a new trial or appeal which may be taken in connection therewith.

Dated this 20th day of September, 1940.

ERNEST R. UTLEY

Referee in Bankruptcy.

[Endorsed]: Filed Sep. 20, 1940, Ernest R. Utley, Referee.

[Endorsed]: Filed Apr. 2, 1941, R. S. Zimmerman, Clerk. [53]

[Title of District Court and Cause.]

CERTIFICATE OF CONTEMPT

The petition to have Bolsa Chica Oil Corporation, a corporation, McVicar-Rood, Inc., a corporation, M. M. McCallen Corporation (whose name was misspelled in the petition as M. M. McCullum Corporation), a corporation, H. H. McVicar, C. M. Rood, M. M. McCallen (whose name was misspelled in the petition as M. M. McCullum), Thomas W. Simmons, Allen A. Anderson (designated in the petition as "John Doe" Anderson), William S. Cree and Warren S. Palette certified for contempt to the United States District Court for violating and aiding and abetting in the violation of that certain Injunction entered on May 15, 1940, in the above entitled matter, together with the Order to Show Cause issued thereon, and personally served upon each of said persons, came on regularly for hearing before the Honorable Ernest R. Utley, Referee in Bank-

ruptcy on August 30, 1940, at 10 o'clock A. M. and was on said date continued to September 26, 1940, at 10 o'clock A. M. and after being partially heard on said date was continued to September 30, 1940, and after being again partially heard on said date was continued to and concluded on October 1st, 1940. The petitioner, Hubert F. Laugharn, as Trustee in Bankruptcy, appeared through and was represented by Raphael Dechter and Joseph J. Rifkind, his attorneys; the respondents, Bolsa Chica Oil Corporation, a corporation, Thomas W. Simmons, Allen A. Anderson and Warren S. Pallette appeared at each of said hearings and were represented at each of said hearings by attorneys, Eugene Overton and Warren S. Pallette, of Overton, Lyman & Plumb, attorneys; the respondents [54] McVicar-Rood, Inc., a corporation, M. M. McCallen Corporation, H. H. McVicar, C. M. Rood, M. M. McCallen and William H. Cree appeared at each of said hearings and were represented at each of said hearings by attorneys William H. Cree and Elizabeth R. Henzel. Oral and documentary evidence having been introduced, the law applicable to the matter having been argued in open Court and by the filing of briefs by the respective counsel, the Court having been fully advised in the premises, now makes the following findings of fact, conclusions of law and certification to the United States District Court.

FINDINGS OF FACT

That Hubert F. Laugharn now is and at all times herein mentioned has been the duly appointed, qualified and acting trustee in bankruptcy in the above entitled matter. That one of the principal assets of said bankrupt estate is that certain oil well commonly known and designated as "Huntington Shore Well" situated in the County of Orange, State of California, on that certain real property more particularly described as follows:

Lot Two (2) in Block Three Hundred Nineteen (319) of Huntington Beach Seventeenth Street Section in the City of Huntington Beach, as per map thereof recorded in Book 4, Page 10 of Miscellaneous Maps, Records of said County,

That said well is located in what is commonly known as the Huntington Beach Oil Field and said well was drilled and is being operated under an easement granted by the State of California, being Easement No. 309-2A.

That on or about the 20th day of September, 1936, the Termo Oil Company commenced the redrilling of its Termo Well and that as a result of said redrilling, sand, cement, and other foreign substances were forced through the oil sands up into the Huntington Shore Well, causing the equipment used in the operation of the Huntington Shore [55] Well to become clogged and stuck and making it impossible to operate or produce from said well. That as a result thereof the Trustee in Bankruptcy in an en-

deavor to clean out and remove the said sand, cement and other foreign substances, to dislodge and free the obstructions in said Huntington Shore Well expended on what is commonly known as a fishing job, the sum of approximately \$20,000.00. That all efforts to free the equipment of said Huntington Shore Well proved unsuccessful and it was necessary for the Trustee in Bankruptcy to re-drill said Huntington Shore Well at a cost of \$80,000.00 and to surrender a 20% interest in said well in addition to said sum as part of the cost of re-drilling said well. That said Huntington Shore Well after being re-drilled was placed on production on August 15th, 1937, and the average daily production from said Huntington Shore Well since said date was 295 barrels per day.

That on or about April 15, 1940, the Bolsa Chica Oil Corporation commenced the re-drilling of its well commonly known and designated as "Petroleum Well, also known as Fee No. 1 Well", situated in the County of Orange, State of California, on that certain real property more particularly described as follows:

Lots Twenty (20) and Twenty-two (22) in Block One Hundred Nineteen (119) of the Huntington Beach Seventeenth Street Section in the City of Huntington Beach, as per Map recorded in Book 4, Page 10 of Miscellaneous Maps, records of said County,

That on said date the respondents were familiar with and were aware of the effect of the drilling of the Termo Well on the Huntington Shore Well.

That thereupon an application was made to the above entitled Court to enjoin the Bolsa Chica Oil Corporation from drilling its "Petroleum Well, also known as Fee No. 1 Well" at Huntington Beach, California, closer than 200 feet from the Huntington Shore Well and from using mud as a circulating fluid in the redrilling of said well. That [56] at said hearing testimony was introduced on behalf of the Trustee in Bankruptcy that if said well were drilled closer than 200 feet and if mud were used as a circulating fluid in the redrilling of said well that the mud so used in the said redrilling, which is pumped into the well in a liquid state under hydraulic pressure, would infiltrate and go through the oil sands carrying with it sand and other foreign substances which would clog up the oil sands and be forced up into the Huntington Shore Well and that in all probability serious and irreparable damage would result with a possible loss of said Huntington Shore Well. That after the testimony introduced on behalf of the trustee in bankruptcy and upon the conclusion of the cross-examination by the attorneys for the Bolsa Chica Oil Corporation of the witnesses called on behalf of the trustee in bankruptcy, the attorneys for the Bolsa Chica Oil Corporation stipulated in open court to the granting of an injunction against the Bolsa Chica Oil Corporation restraining them from coming closer than 200 feet from the Huntington Shore Well and prohibiting the Bolsa Chica Oil Corporation from using mud as a circu-

lating fluid in the redrilling of this well. That pursuant to the stipulation entered into between the attorneys for the trustee in bankruptcy and the attorneys for the Bolsa Chica Oil Corporation an injunction was submitted to the above entitled court which had been previously approved as to form and content by the attorneys for the trustee in bankruptcy and the attorneys for Bolsa Chica Oil Corporation, and said injunction was issued by the court on May 15, 1940. That notice of the entry of said injunction together with a copy of the injunction was served upon Overton, Lyman & Plumb as attorneys for the Bolsa Chica Oil Corporation, and also upon the Bolsa Chica Oil Corporation itself. That no petition for review or appeal has been taken from said injunction within the time provided by law, or otherwise, or at all, and the said injunction has become by operation of law final and absolute. [57]

That said injunction provides that the Bolsa Chica Oil Corporation, its superintendents, agents and employees shall be, and they are, restrained and enjoined from using any circulating fluid in the drilling, redrilling or side-tracking of said Petroleum Well, also known as Fee No. 1 Well, other than virgin crude oil maintained at a grade and gravity consistent with good oil field practice in said field and further provides that no mud, or other foreign substances of any kind, shall be used in lieu or as part of said circulating fluid unless mutually agreed to in writing by the petroleum engineers for

the respective parties thereto. That after the granting of said injunction and with full knowledge of the granting of the injunction and the terms thereof and after said injunction and the notice of the entry thereof had been served upon said Bolsa Chica Oil Corporation and its said attorneys, the said Bolsa Chica Oil Corporation resumed the redrilling of said Petroleum Well, also known as Fee No. 1 Well, by using mud as a circulating fluid in the redrilling thereof in direct violation of the express prohibition contained in said injunction against the use thereof.

That the petroleum engineer of the Trustee was aware of and had knowledge that the respondents were using mud on said Fee No. 1 Well, contrary to order of this Court, but said petroleum engineer of the Trustee had no supervision or control over the operations of respondents and said petroleum engineer of the Trustee did caution said respondents against using mud when they reached a depth of approximately 4025 feet, and if said warning of the petroleum engineer of the Trustee had been heeded, the damage resulting to the Trustee hereinafter set forth would not have occurred; that no consent in writing was ever given by the Trustee nor his engineer to the use of mud by the respondents; that it would have been good oil field practice when the respondents reached a depth of approximately 4,000 feet, to have commenced coring the formation through which the well of respondents was being drilled, and that if such cores had been taken they

would have indicated a formation [58] extending approximately over 200 feet containing streaks of oil sand, which would have indicated to respondents that they were approaching the main body of oil sand and which would have indicated to respondents the fact that to continue to use mud would mean that such mud would permeate and migrate through such sands to the well of the Trustee.

That as the result of the use of mud as a circulating fluid in the redrilling of said well, mud in liquid form, carrying with it sand and other foreign substances infiltrated through the oil sands and was forced up into the Huntington Shore Well, forming a column of mud in said Huntington Shore Well of 3700 feet from the bottom of said well. That as a result thereof, the production from and the operation of said Huntington Shore Well was shut down and suspended for a period of 20 days from June 7, 1940 to June 27, 1940, while pulling, baling, washing and other remedial work was being carried on on behalf of the Trustee in Bankruptcy in an endeavor to remove, clean out and dislodge the mud, sand and other foreign substances which had been infiltrated through the oil sands and forced up into said well as a result of the use of mud as a circulating fluid in said drilling operations. That said mud was brought on to the premises of the "Petroleum Well, also known as Fee No. 1 Well" and mixed into liquid form and in such liquid form forced into the well being redrilled under hydrostatic pressure; that

said mud escaped and was lost in said redrilling, and that it was received by and came up into the well of the Trustee in Bankruptcy; that specimens of the mud lost in the redrilling and received in the Huntington Shore Well were tested, analyzed and examined and shown conclusively to be the mud used in said redrilling.

That at the time of the commencement of said redrilling operations by the Bolsa Chica Oil Corporation, the Huntington Shore Well was producing 265 barrels of oil per day. That as the direct and proximate result of the infiltration and forcing of mud, sand and other foreign substances through the oil sands up and into the Huntington Shore Well [59] as the result of the redrilling operations of the Bolsa Chica Oil Corporation, the Huntington Shore Well, after being replaced upon production on or about June 27, 1940, produced 160 barrels of oil per day.

That the damage to the Trustee in Bankruptcy as the result of the use of mud as a circulating fluid in the redrilling of said well for the period of said 20 days was 265 barrels of oil per day at 90¢ per barrel, which was a fair and reasonable price of oil of said gravity in said field during said period and was the price that the Trustee would have received for oil produced during said period, amounting to \$4,770.00. That the damage to the Trustee in Bankruptcy resulting from 20 days' loss of pressure from wet and dry gas at a fair and reasonable market price for wet and dry gas which the Trustee would

have received for such wet and dry gas amounts to \$248.00. That the damage sustained by the Trustee as a result of the decline of oil produced during the period from June 27, 1940, to September 1, 1940, computed upon the fair and reasonable market value thereof and the price the Trustee would have received therefore, amounted to 3700 barrels of oil at 90¢ per barrel, or \$3,330.00. That the damage sustained by the Trustee on account of money expended and obligations incurred for pulling, baling, washing and other remedial material, labor and technical assistance in the removal of the mud, sand and other foreign substances which had infiltrated through the oil sands and had been forced up into the said well, amounted to \$3,642.00. All to the Trustee's aggregate damage as of September 1, 1940, in the sum of \$12,540.00. That in addition thereto, the production of oil and gas from the Huntington Shore Well was shown to have been permanently impaired and decreased for the balance of the life of said well. That as the direct and proximate use of mud as the circulating fluid in the redrilling of said Petroleum Well, also known as Fee No. 1 Well, in violation of said injunction and the infiltration of said mud through the oil sands and up into the Huntington Shore Well, the production of said Huntington Shore Well has been diminished by approximately 60 barrels of [60] oil per day for the balance of the life of said well and that the reasonable life of said well is another ten years.

That the use of mud as a circulating fluid in the

redrilling operations were carried on by the Bolsa Chica Oil Corporation with the knowledge and consent and under the direction of Thomas W. Simmons, its president, and Allen A. Anderson, the superintendent in charge of redrilling operations, both of whom were familiar with the issuance and terms of said injunction of May 15, 1940.

That all of the damage sustained to and the impairment of the production from the Huntington Shore Well was anticipated by the Trustee in applying for said injunction and the purpose of issuing said injunction was expressly to avoid said consequences and such damage would not have resulted had mud not been used brought on to and used as a circulating fluid in the redrilling of said well. That such consequences were indicated and made known at the time of the application for and the granting of said injunction and said parties knew that such consequences would probably result from the use of mud as a circulating fluid, and nevertheless proceeded to use mud as a circulating fluid in open defiance and in violation of the express terms of the injunction.

That after said mud in liquid form carrying with it sand, debris and other foreign substances had infiltrated through the oil sands and had clogged and stopped up the Huntington Shore Well, further redrilling was suspended by the Bolsa Chica Oil Corporation on or about the 10th day of June, 1940.

That the attorneys for the Trustee in Bankruptcy upon obtaining information that the Bolsa Chica Oil

Corporation was about to resume the redrilling of said well with the use of mud as a circulating fluid sent a registered letter to the Bolsa Chica Oil Corporation on behalf of the Trustee in Bankruptcy, on July 31, 1940, again directing its attention to the injunction of this Court against the use of mud as a circulating fluid and again enclosing a copy of the injunction and notifying the [61] Bolsa Chica Oil Corporation that unless it forthwith desisted from using mud as a circulating fluid in the redrilling of said well that application would be made to the Court to have them cited for and certified for contempt for violating said injunction. That pursuant to said letter a conference was arranged by Thomas W. Simmons, president of Bolsa Chica Oil Corporation, on August 1st, 1940, at one o'clock P. M., at which there was present Thomas W. Simmons, president of Bolsa Chica Oil Corporation, Warren S. Palette and William H. Cree, attorneys for said Bolsa Chica Oil Corporation, Mr. Allen A. Anderson, drilling superintendent of Bolsa Chica Oil Corporation, Vernon L. King, petroleum engineer for the Trustee in Bankruptcy, Mr. R. D. Holdredge, representing the Trustee, and Joseph J. Rifkind, one of the attorneys representing the Trustee. That the Bolsa Chica Oil Corporation, through its president, superintendent and attorneys requested and endeavored to procure an agreement or stipulation eliminating from the injunction the provision against the use of mud as a circulating fluid. That said Bolsa Chica Oil Corporation, through said

president on its behalf, was advised at said conference that as a result of the use of mud as a circulating fluid by the Bolsa Chica Oil Corporation that a column of mud 3700 feet high had been forced up into the Huntington Shore Well; that it had been necessary as a result thereof to shut down and suspend operations and to pull bale and wash said well in an endeavor to remove the mud and other obstructions from said well and that in addition to the loss and expense in so doing, the production from said well had been permanently impaired, that such condition was the best evidence that the use of mud as a circulating fluid was actually damaging the Huntington Shore Well and that no modification of the injunction in that respect would be stipulated to.

That Thomas W. Simmons, president of Bolsa Chica Oil Corporation stated at said conference that a large amount of money had been expended in the redrilling of said well and that mud was the only fluid [62] that could be used to advantage in the redrilling of said well and that some way would have to be found to resume redrilling operations despite said injunction. That William H. Cree, one of the attorneys for the Bolsa Chica Oil Corporation, at said conference, stated that he advised the ignoring of the injunction and the resumption of the redrilling of said well using mud as a circulating fluid, stating: "If this were my well I wouldn't pay any attention to the damned injunction." That counsel for the Trustee, at said conference, stated that the injunction was in full force and effect and until

said injunction was set aside or vacated by the Court or on review or on appeal, no other course would be open to the Trustee in the event said injunction was violated and mud used as a circulating fluid but to file a petition to have all of the offending parties cited for contempt of Court.

That previous to said conference Thomas W. Simmons, as President of Bolsa Chica Oil Corporation, had a conference with Raphael Dechter the other counsel for the Trustee, during the month of July, 1940, in which a proposal was made that if the Trustee would consent to the modification of the injunction permitting the use of mud as a circulating fluid instead of virgin crude oil that the Bolsa Chica Oil Corporation would be willing to assign to the Trustee a 25% interest in its well to commence participating after the costs of redrilling had been repaid. That prior to said conference Thomas W. Simmons as president of Bolsa Chica Oil Corporation also had a conference with J. D. Sterling in an endeavor to work out a modification of said injunction through him. That said injunction was not as a result of any of said conferences, or otherwise, or any time, or at all, in any manner whatsoever modified by consent of the parties on order of Court.

That information was thereafter received by the Trustee that an arrangement had been entered into by and between the Bolsa Chica Oil Corporation through Thomas W. Simmons, its president, and M. M. McCallen Corporation through H. H.

McVicar and C. M. Rood, its President [63] and Secretary, whereby the oil and gas lease of the Bolsa Chica Oil Corporation would be assigned to M. M. McCallen Corporation, which would resume said drilling operations. That upon receipt of said advice, a letter was sent by registered mail to McVicar-Rood, Inc., dated August 21, 1940, advising them of the injunction and the restriction against the use of mud in the redrilling thereof.

That William H. Cree was at all times herein mentioned and for many years last past has been the attorney for H. H. McVicar and C. M. Rood and was the attorney who organized and represented the M. M. McCallen Corporation, which is jointly and equally owned, controlled and managed by and is the corporate instrumentality of said H. H. McVicar and C. M. Rood; that said William H. Cree prepared the assignment of the oil and gas lease from the Bolsa Chica Oil Corporation to M. M. McCallen Corporation, dated August 14, 1940, and the drilling and operating agreement between Bolsa Chica Oil Corporation and M. M. McCallen Corporation, dated August 14, 1940; that said William H. Cree with full knowledge of said injunction, conducted the negotiations and prepared the agreement and assignment through which an attempt would be made to have it appear that M. M. McCallen Corporation, H. H. McVicar and C. M. Rood had succeeded to the rights of the Bolsa Chica Oil Corporation and had taken over the redrilling operations of said corporation. And all of said parties at the

time of said negotiations and the preparation and execution of said assignment knew that said agreement and assignment was for the purpose of misleading and deceiving the Court and not bona-fide or actual and was part of the conspiracy of said parties to violate the injunction of the Court aforesaid.

That Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, M. M. McCallen Corporation, H. H. McVicar, C. M. Rood and William H. Cree did at some time subsequent to August 1st, 1940, enter into a conspiracy for the purpose of violating and circumventing, and each of said parties aided and abetted the violation and circumvention [64] of said injunction and said assignment and agreement were colorable and not bona fide and were part of the subterfuge, scheme and device, deliberately, wilfully and premeditatedly planned and carried out under the belief and with the intent to evade and escape the force and effect of said injunction against the use of mud as a circulating fluid in the redrilling operation of the Petroleum Well, also known as Fee No. 1 Well. That disregarding the said injunction and the letters sent on behalf of the Trustee and the express admonition in that respect, the said parties commenced redrilling and again commenced the use of mud as a circulating fluid in the redrilling of said well on August 22, 1940. That the Trustee upon learning of the resumption of said redrilling operations and the use of mud as a circulating fluid in connection therewith filed a peti-

tion to have the Bolsa Chica Oil Corporation, et al., certified for contempt to the United States District Court and an order to show cause was issued on August 22, 1940, requiring said parties and each of them to show cause on August 30, 1940, at 10 o'clock A. M. why they should not be certified to the United States District Court for contempt for violating, aiding and abetting in the violation of the injunction of May 15, 1940, issued in the above entitled matter, and specifically restraining each of said persons from using mud as a circulating fluid pending the hearing of said order to show cause. That copies of said petition and the order to show cause issued thereon was served upon said parties on August 22, 1940, at 7 o'clock P. M.; that despite said order to show cause why said parties should not be cited for contempt of court they continued to use mud as a circulating fluid in the redrilling operations that entire night and through the following day.

CONCLUSIONS OF LAW

The Referee in Bankruptcy concludes that Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson are guilty of contempt of Court and said persons and each of them with full knowledge of said [65] injunction of May 15, 1940, resumed and permitted the resumption of the use of mud as a circulating fluid in the redrilling of said Petroleum Well, also known as Fee No. 1 Well; that the Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, M. M. McCallen Corpo-

ration, H. H. McVicar, C. M. Rood and William H. Cree are, and each of them is guilty in violating and aiding and abetting in the violation of the injunction of May 15, 1940, in using and permitting the use of mud as a circulating fluid when redrilling operations were resumed on August 22, 1940.

CERTIFICATE

The Referee in Bankruptcy therefore certifies the Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation and William H. Cree, and each of them, to the United States District Court for violating the injunction of May 15, 1940, issued in the above entitled matter, and for such punishment as the United States District Court may deem proper and appropriate for such contempt. The Referee in Bankruptcy further certifies that there are no extenuating or mitigating circumstances on behalf of said persons, or any of them, and that Bolsa Chica Oil Corporation, Thomas W. Simmons, its president, and Allen A. Anderson, its superintendent, is resuming redrilling subsequent to May 15, 1940, on the said Petroleum Well, also known as Fee No. 1 Well, used mud as a circulating fluid in direct violation of the express terms of the injunction and in the utter and open disregard thereof.

The referee in Bankruptcy finds no extenuating or mitigating circumstances on behalf of the second series of contempts occurring subsequent to August 1, 1940, but on the contrary that Bolsa Chica Oil

Corporation, Thomas W. Simmons, Allen A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation and William H. Cree did wilfully and premeditatedly plot and scheme and did enter into a conspiracy for the express and deliberate purpose of evading and circumventing the [66] injunction against the use of mud as a circulating fluid and knowing the damage likely to result from their conduct.

The Referee in Bankruptcy transmits herewith for the consideration of the United States District Court, the following:

1. Injunction against Bolsa Chica Oil Corporation, et al., dated May 15, 1940.

2. Petition to have Bolsa Chica Oil Corporation, et al., certified for contempt.

3. Order to Show Cause on Petition to have Bolsa Chica Oil Corporation, et al., certified for contempt, dated August 22, 1940.

4. Points and Authorities on behalf of the Trustee in Bankruptcy re Order to Show Cause why Bolsa Chica Oil Corporation, et al., should not be certified for contempt.

5. Points and Authorities on behalf of respondents Bolsa Chica Oil Corporation, Thomas W. Simmons and Allen A. Anderson re Order to Show Cause why they should not be certified for contempt.

6. Memorandum of Points and Authorities on behalf of respondents M. M. McCallen Corporation, H. H. McVicar, C. H. Rood and William H. Cree, re Order to Show Cause why they should not be certified for contempt.

7. Trustee's reply to Points and Authorities of respondents Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, M. M. McCallen Corporation, H. H. McVicar, C. M. Rood, and William H. Cree re Order to Show Cause in Contempt.

8. Summary by Trustee of loss and expense, dated September 26, 1940 introduced as Trustee's Exhibit No. 1.

9. Letter to Bolsa Chica Oil Corporation dated July 30, 1940, introduced as Trustee's Exhibit No. 2.

10. Drilling and Operating Agreement between Bolsa Chica Oil Corporation and M. N. McCallen Corporation dated August 14, 1940, introduced as Trustee's Exhibit No. 3. [67]

11. Assignment of Oil and Gas Lease from Bolsa Chica Oil Corporation to M. M. McCallen Corporation, dated August 14, 1940, introduced as Trustee's Exhibit No. 4.

12. Log offered for identification as Trustee's Exhibit No. 5.

13. Letter to McVicar-Rood, Inc., dated August 21, 1940, introduced as Trustee's Exhibit No. 6.

14. Reporter's transcript of April 26, and May 1st, 1940.

15. Reporter's transcript of September 26, September 30 and October 1st, 1940.

Dated: this 30 day of December, 1940.

ERNĒST R. UTLEY,

Referee in Bankruptcy.

[Endorsed]: Filed Dec. 31, 1940. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [68]

[Title of District Court and Cause.]

MOTION OF BOLSA CHICA OIL CORPORATION,
THOS. W. SIMMONS AND ALLEN
A. ANDERSON FOR AN ORDER TO SHOW
CAUSE WHY A CERTIFICATE OF CON-
TEMPT SHOULD NOT BE DISMISSED.

Come Now Bolsa Chica Oil Corporation, a corporation, Thos. W. Simmons and Allen A. Anderson and move this court for an order directing George T. Goggin, Trustee of the above entitled bankrupt estate, and the Honorable Ernest R. Utley, Referee in Bankruptcy of this court, to appear on January 20, 1941 at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, and there and then to show cause why a certificate of contempt heretofore filed by the Honorable Ernest R. Utley on the 31st day of December, 1940 in the files and records of this court, should not be heard and dismissed. Said motion is made on the following grounds, to-wit:

1. A referee in bankruptcy and a federal district court have no jurisdiction to adjudge these movants to be in contempt, it appearing on the face of the record that said movants and each of them, did not consent to any of the proceedings herein.

2. A referee in bankruptcy and a federal district court have no jurisdiction or control over the property of third persons when said property is not an asset of the bankrupt estate or in the custody or control of said district court.

3. Said certificate of contempt is not supported by [69] the evidence.

4. The Referee wrongfully excluded material and competent testimony in said contempt proceedings before him.

Said motion will be based upon the affidavits of W. S. Palette and Donald H. Ford attached hereto and made a part of this motion, upon the records and files of this proceeding and the memorandum of points and authorities attached hereto.

Signed: OVERTON, LYMAN & PLUMB

EUGENE OVERTON

W. S. PALLETTE

DONALD H. FORD

By DONALD H. FORD

Address: 733 Roosevelt Building,
727 West 7th Street,
Los Angeles, California. [70]

[Title of District Court and Cause.]

AFFIDAVIT OF W. S. PALLETTE

State of California,
County of Los Angeles—ss.

W. S. Palette, being duly sworn, deposes and says:

That he is the Secretary of Bolsa Chica Oil Corporation, one of the defendants herein. That said Bolsa Chica Oil Corporation has expended in the re-drilling of its Petroleum Fee #1 well at Huntington Beach, California the sum of approximately

\$45,000.00, but that said well has not been completed. That in view of the injunction issued by the Referee in Bankruptcy herein and the petition for certification of contempt, Bolsa Chica Oil Corporation has been unable to conduct any work toward the completion of said well since prior to the 1st day of August, 1940. That said well is held under a certain Easement Agreement with the State of California, pursuant to which the operator of said well is entitled to produce oil from the tidelands lying offshore at Huntington Beach, California, into which tidelands said Petroleum Fee #1 well of Bolsa Chica Oil Corporation and the well belonging to the Trustee for the bankrupt, are drilled.

That the lease under which Bolsa Chica Oil Corporation is entitled to the use of the land upon which the surface location of the well is located, will shortly expire, in which event Bolsa Chica Oil Corporation will no longer have any right, title or interest in said well and will be unable to complete or pro- [71] duce the same. That the State of California, through representatives of the State Lands Commission, having jurisdiction over the Easement Agreement under which said well may be produced from the state-owned tidelands, has threatened to rescind and revoke, cancel and terminate said Easement Agreement for failure to produce said well, unless drilling operations are forthwith recommenced. That it is therefore necessary that an immediate determination of the validity of the

Referee's order of injunction by the United States District Court be obtained, inasmuch as if it is determined that the Referee was without jurisdiction to make such order, Bolsa Chica Oil Corporation will then be in a position to make the necessary arrangements with the State of California for the completion of said well and thereupon complete the same, with the opportunity of recouping its expenditures to date of approximately \$45,000.00 in connection with the redrilling of said well. That it is to the advantage of the Trustee in Bankruptcy that these proceedings be postponed, inasmuch as failure to obtain an immediate determination will result in the loss of this valuable property by Bolsa Chica Oil Corporation for the reasons above set forth, and that affiant believes that the Trustee in Bankruptcy will take no steps toward bringing this matter on for hearing immediately.

W. S. PALLETTE

Subscribed and Sworn to before me this 9th day of January, 1941.

[Seal]

M. DE VINEY

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires March 2, 1943. [72]

[Title of District Court and Cause.]

AFFIDAVIT OF DONALD H. FORD

State of California,
County of Los Angeles—ss.

Donald H. Ford, being duly sworn, deposes and says:

That he is an attorney-at-law duly admitted to practice before the United States District Court, Southern District of California, Central Division. That he is one of the attorneys for defendants herein, Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson. That he has made an examination of the files and records in the above entitled proceeding. That nothing appears of record in said proceeding since the filing of the Certificate of Contempt against said defendants and others on December 31st, 1940, by the Honorable Ernest R. Utley, Referee in Bankruptcy, with reference to bringing said Certificate of Contempt on for hearing before the Court. That an examination of the Certificate of Contempt and the matters incorporated therein by reference reveals that while the Certificate of Contempt on its face shows that these defendants consented to the jurisdiction of the Referee to entertain the proceeding involved and to issue the order of injunction therein, the order of injunction and the transcripts of the proceedings show on their faces that these defendants at all times objected to and maintained their objections to the jurisdiction of the Referee to entertain said pro-

ceedings or to make and enter said order. That affiant believes that said [73] order was beyond the jurisdiction of the Referee in Bankruptcy to make by summary proceeding in the absence of a plenary suit. That on the face of the record neither the Referee in Bankruptcy nor this Honorable Court has jurisdiction to make or enter said order in the absence of consent of said defendants. That any damage which the trustee in bankruptcy may have suffered is fully ascertainable and recoverable in an action for damages in the proper tribunal. That the trustee in bankruptcy has commenced an action in the Superior Court of the State of California, in and for the County of Los Angeles, being number 456167 in said Court for the purpose of recovering damages on account of the alleged actions of these defendants, which said action is now pending in said Court and which said action was filed on or about the 20th day of September, 1940.

DONALD H. FORD

Subscribed and sworn to before me this 9th day of January, 1941.

[Seal]

M. DE VINEY,

Notary Public in and for said
County and State.

My Commission Expires March 2, 1943.

[Endorsed]: Motion for Order to Show Cause.
Filed Jan. 9, 1941. [74]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE ON MOTION
OF BOLSA CHICA OIL CORPORATION,
THOS. W. SIMMONS AND ALLEN A. AN-
DERSON RELATIVE TO CERTIFICATE
OF CONTEMPT.

Upon reading and filing the motion of Bolsa Chica Oil Corporation, Thos. W. Simmons and Allen A. Anderson in the above entitled matter, together with the affidavits of W. S. Palette and Donald H. Ford, and good cause appearing therefrom,

It Is Ordered that George T. Goggin, Trustee of the above entitled bankrupt estate, and the Honorable Ernest R. Utley, Referee in Bankruptcy of this court, be and appear before the Honorable Leon R. Yankwich in Court Room No. 5, Federal Building, Temple and Spring Streets, Los Angeles, California on the 27th day of January, 1941 at 10:00 o'clock A. M., then and there to show cause, if any they have, why the certificate of contempt heretofore filed on December 31, 1940 in the files and records of the above entitled proceeding should not be dismissed.

It Is Further Ordered by the above entitled court that a copy of the motion of Bolsa Chica Oil Corporation, Thos W. Simmons and Allen A. Anderson and the affidavits of W. S. Palette and Donald H. Ford be served concurrently with the service of this order.

Dated: January 9, 1941.

PAUL J. McCORMICK, Judge.

[Endorsed]: Filed Jan. 9, 1941. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [75]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE IN RE CONTEMPT
AGAINST BOLSA CHICA OIL CORPORA-
TION, THOS. W. SIMMONS AND ALLEN
A. ANDERSON, ET AL.

It appearing to the Honorable Ernest R. Utley, Referee in Bankruptcy that Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation and William H. Cree, and each of them, be adjudged in contempt, and the Honorable Ernest R. Utley, Referee in Bankruptcy, having certified the facts to the Honorable Paul J. McCormick, United States District Judge, now, therefore,

It Is Ordered that Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation and William H. Cree, and each of them, are hereby directed to appear in the Courtroom of the Honorable Paul J. McCormick, United States District Judge, in the Federal Building, Los Angeles, California, on Monday, the 20th day of January, 1941, at the hour of 10 o'clock A. M., and then and there show cause if any they or any of them may have, why an order should not be made adjudging them, and each of them, as being in contempt.

It Is Further Ordered that service of this order to show cause may be made on counsel of record who

have heretofore appeared for said persons above named before this Court.

Dated this 13 day of January, 1941.

ERNEST R. UTLEY,

Referee in Bankruptcy.

[Endorsed]: Filed Jan. 14, 1941. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [76]

At a stated term, to wit: The September Term, A. D. 1940, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, California, on Thursday the 30th day of January in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable Leon R. Yankwich,
District Judge.

No. 26,685-Y Bkey.

In the Matter of

JACK DAVE STERLING,

Bankrupt.

This matter coming before the Court for (1) further hearing on return of order of February 9, 1941, to George T. Goggin, Trustee, to show cause why the certificate of contempt filed Dec. 31, 1941, should

not be dismissed; (2) hearing on return of order of January 13, 1941, to Bolsa Chica Oil Corporation, Thomas W. Simmons, Allen A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation, and W. H. Cree to show cause why they should not be adjudged in contempt pursuant to the certificate of the referee; Raphael Dechter and J. J. Rifkind, Esqs., appearing as counsel for the Trustee; Elizabeth Hensel, Attorney, appearing as counsel for Respondent Cree, et al.; Eugene Overton and W. S. Palette, Esqs., being present for movants and respondents Bolsa Chica Oil Corporation; and G. M. Fox, Court Reporter, being present and reporting the testimony and the proceedings:

The Court makes a statement; Attorney Dechter argues further for the Trustee; Attorney Palette argues further for the respondent; Attorney Rifkind argues further for the Trustee; and Attorney Hensel argues for Respondent Cree. Court recesses to 2 o'clock P. M.

At 2 o'clock P. M. court reconvenes, and all being present as before, Attorney Dechter argues further for the Trustee. [77]

The Court comments on facts, record and authorities. The Clerk is ordered to make petition and order part of the record in this proceeding.

The Court sustains objection to the jurisdiction and declines to hear further upon the certificate of contempt.

Attorney Dechter asks that injunction remain in effect.

Counsel for prevailing parties will prepare formal order. Meanwhile, injunction shall remain in effect. [78]

In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy Consolidated Cause No. 26685-Y

In the Matter of

JACK DAVE STERLING,

Bankrupt.

ORDER

Re: Certificate of Contempt

This cause came on to be heard on Monday, January 20, 1941, and was continued to Monday, January 27, 1941, before the Honorable Leon R. Yankwich, Judge of the above entitled Court, on Order to Show Cause made by the Honorable Paul J. McCormick, Judge of said Court, on January 9, 1941, on Motion of Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson, relative to Certificate of Contempt filed by the Honorable Ernest R. Utley, Referee in Bankruptcy, in said Court, on December 31, 1940, and on Order to Show Cause in re Contempt against Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson, et al., made by said Honorable Ernest R. Utley, Referee in Bankruptcy, on January 13, 1941, and on said Certificate of Contempt and the pleadings and

records referred to therein. Said cause, after being partially heard on said January 27, 1941, was continued to January 30, 1941, for further hearing, and was further heard and concluded on said day. The Trustee in Bankruptcy, George T. Goggin, appeared through and was represented by Joseph J. Rifkind and Raphael Dechter, his attorneys; Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson appeared specially through and were represented by Overton, Lyman & Plumb, Eugene Overton and W. S. Palette, their attorneys; and William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation appeared specially through and were represented by Elizabeth R. Hensel and William H. Cree, their attorneys. [79]

Said Bolsa Chica Oil Corporation, Thos. W. Simmons, Allan A. Anderson and William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation, through their respective attorneys, at the commencement of the hearing, stated to the Court that each of them was appearing specially for the sole purpose of objecting to any jurisdiction of the District Court or the Referee in Bankruptcy to hear or determine the issues involved in this cause.

The Court considered said Certificate of Contempt and the pleadings and record supporting the same and heard argument of counsel in connection therewith. From such consideration and argument it appeared to the Court that the Referee in Bankruptcy and this United States District Court, and each of

them, were at all times in this cause involved and now are without jurisdiction to make or enter the Injunction upon which said Certificate of Contempt is based. The Court being fully advised in the premises, refused to hear any evidence upon or determine the merits of the controversy, and thereupon

Ordered, Adjudged and Decreed As follows:

1. That the objections of Bolsa Chica Oil Corporation, Thos. W. Simmons, Allan A. Anderson, William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation, and each of them, to the jurisdiction of the Referee in Bankruptcy and this Court, and each of them, to make or enter said Injunction or to hear or determine the issues presented by said Certificate of Contempt and the pleadings and record in this proceeding are hereby sustained, and the Certificate of Contempt filed by the Referee in Bankruptcy in this cause on December 31, 1940, is hereby dismissed.

Dated this 7th day of February, 1941.

LEON R. YANKWICH,
Judge of the above entitled
Court. [80]

Approved As to Form:

JOSEPH J. RIFKIND and
RAPHAEL DECHTER,

By R. DECHTER

Attorneys for Trustee
OVERTON, LYMAN & PLUMB,
EUGENE OVERTON and
W. S. PALLETTE

By W. S. PALLETTE

Attorneys for Bolsa Chica Oil
Corporation, Thos. W. Sim-
mons and Allan A. Anderson
ELIZABETH R. HENSEL and
WILLIAM H. CREE

By.....

Attorneys for William H. Cree,
H. H. McVicar, C. M. Rood
and M. M. McCallen Corpo-
ration.

[Endorsed]: Filed Feb. 7, 1941. R. S. Zimmer-
man, Clerk. By C. A. Simmons, Deputy Clerk.

[81]

[Title of Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that George T. Goggin, Trustee in Bankruptcy of the above entitled bankrupt estate, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order dismissing the Referee's Certificate citing Bolsa Chica

Oil Corporation, a corporation, M. M. McCallen Corporation, a corporation, H. H. McVicar, C. M. Rood, Thos. W. Simmons, Allan A. Anderson and William H. Cree, to the District Court for contempt, the minute order of which was entered in this proceeding on the 30th day of January, 1941, and the formal order of dismissal being entered in this proceeding on the 7th day of February, 1941.

Dated this 13th day of February, 1941.

RAPHAEL DECHTER and
JOSEPH J. RIFKIND

By R. DECHTER

Attorneys for Trustee

[Endorsed]: Filed Feb. 13, 1941. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk [82]

[Title of District Court and Cause.]

No. 26685-Y

DIRECTIONS TO CLERK OF DISTRICT COURT FOR A NOTIFICATION OF FILING OF NOTICE OF APPEAL AND MAILING COPIES THEREOF TO ALL PARTIES TO THE JUDGMENT OTHER THAN THE PARTY TAKING THE APPEAL.

To R. S. Zimmerman, Clerk of the above entitled Court:

Pursuant to the provisions of Rule 73(b) of the New Rules of Civil Procedure, you are hereby noti-

fied to give Notice by Mail of the filing of the appeal to the following parties to the judgment, other than the party taking this appeal, or to their counsel of record, as follows:

Name of Party	Name of Counsel, and Address
Bolsa Chica Oil Corporation, Thos. W. Simmons, and Allan A. Anderson William H. Cree, H. H. McVicar, C. M. Rood, and M. M. McCallen Corporation	Overton, Lyman & Plumb, Eugene Overton and W. S. Palette, 733 Roosevelt Bldg. Los Angeles, Calif. Elizabeth R. Hensel and William H. Cree 410 Park Central Bldg. Los Angeles, Calif.

Dated: This 13th day of February, 1941.

R. DECHTER

Attorney for Appellant.

Mailed to above counsel, 2/13/41. E. L. S.

[Endorsed]: Filed Feb. 13, 1941. R. S. Zimmerman, Clerk. By C. A. Simmons, Deputy Clerk. [83]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET
APPEAL

Good cause appearing therefor,

It is hereby ordered that the time to docket the appeal in the above entitled matter, is hereby extended to April 15th, 1941.

Dated this 25th day of March, 1941.

LEON R. YANKWICH

Judge of the District Court.

[Endorsed]: Filed Mar. 25, 1941, R. S. Zimmerman, Clerk. [94]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 105, inclusive, contain full, true and correct copies of the Debtor's Petition under Section 74 of the Bankruptcy Act; Order Approving Debtor's Petition; Debtor's Petition for Adjudication; Adjudication and Order of Reference; Order of Re-Reference; Appointment of Hubert F. Laugharn as Trustee; Order Approving Bond of Trustee Hubert F. Laugharn; Resignation of Trustee Hubert F. Laugharn; Appointment of George Goggin as Trustee; Order Approving Bond of Trustee

George Goggin; Petition of Trustee for Instructions; Affidavit of Vernon L. King; Affidavit of Jack Dave Sterling; Order to Show Cause on Petition for Instructions; Injunction Against Bolsa Chica Oil Corporation, et al.; Petition to Have Bolsa Chica Oil Corporation, et al., Certified for Contempt; Order to Show Cause on Petition to Have Bolsa Chica Oil Corporation, et al., Certified for Contempt; Petition for Authority to Sue Bolsa Chica Oil Corporation, and Proposed Complaint attached thereto; Order Authorizing Suit Against Bolsa Chica Oil Corporation; Certificate of Contempt; Motion to Dismiss Certificate of Contempt; Affidavit of W. S. Pallette; Affidavit of Donald H. Ford; Order to Show Cause on Motion to Dismiss Certificate of Contempt; Order to Show Cause on Certificate of Contempt; Minute Order Granting Motion to Dismiss Certificate of Contempt; Order Dismissing Certificate of Contempt; Notice of Appeal; Service of Notice of Appeal; Statement of Points Upon Which Appellant Intends to Rely on Appeal; Appellant's Designation of Contents of Record on Appeal; Appellee's Designation of Contents of Record on Appeal; Appellant's Supplemental Designation of Contents of Record on Appeal; Order Extending Time to Docket Cause on Appeal; Order for [106] Transmittal of Original Exhibits on Appeal; Trustee's Exhibits Nos. 1, 3 and 4 (filed by Referee on Sept. 26, 1940); which, together with the originals of three volumes of Reporter's Transcript, and the originals of Trustee's

Exhibits 1 to 5, inclusive, (filed by Referee April 26, 1940), transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the Clerk's fee for comparing, correcting and certifying the foregoing record is \$21.20, which fee has been paid to me by the Appellant.

Witness my hand and the seal of said District Court, this 11th day of April, A. D. 1941.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk. [107]

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[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS IN RE: ORDER TO SHOW CAUSE RE: PETITION FOR INSTRUCTIONS.

Los Angeles, California.

Friday, April 26, 1940

Wednesday, May 1, 1940.

Appearances:

Joseph J. Rifkind, Esq. and

Raphael Dechter, Esq.,

for the Trustee.

C. A. Borden, Esq. and

Warren S. Palette, Esq.,

for Bolsa Chica Oil Corporation.

The Referee: Are you ready to proceed in the Sterling matter?

Mr. Rifkind: Yes, your Honor.

The Referee: You may proceed.

Mr. Rifkind: Mr. King, will you please take the stand?

Mr. Borden: At this time I would like to say we are here in obedience to the order to show cause. I am representing the Bolsa Chica Oil Corporation. While, of course, we concede your Honor's authority to make any orders you may deem necessary with respect to directing the Trustee in his work, we do not concede any jurisdiction to make any order that would affect us in this proceeding, we not being a party to the proceeding, but are appearing only specially here and are not submitting to the jurisdiction of the Court.

The Referee: You are objecting to the jurisdiction of the Court to make any orders affecting your company?

Mr. Borden: Yes, your Honor.

Mr. Dechter: May it please the Court, even if that objection was well-founded this Court must necessarily receive evidence to be able to rule on that objection. In other words, it must receive sufficient evidence to determine whether or not the Court has summary jurisdiction.

The Referee: Yes, I think that is true. [108]

Mr. Dechter: We contend this Court would

have summary jurisdiction to make an order binding on the Bolsa Chica Oil Corporation. First, the property is in the property involved and in the control of the bankruptcy court, and the property so in the possession of the bankruptcy court is, by the allegations in the petition and by the proof we expect to put on, is about to be threatened so as to be destroyed almost completely by the actions of the Bolsa Chica Oil Corporation. Also, the bankruptcy court not only has the right to protect this property, but also has the power to enforce orders made by this Court. One of the orders heretofore made by this Court was an order to place this well under production and to maintain and operate the same. It is our position that if our proof is as we expect it to show, that the Trustee in this case has a situation analogous to a Trustee operating a department store, and would be like someone coming into the department store day in and day out removing the property of the bankruptcy court. We think that situation is analogous and we expect our proof to so show.

Mr. Borden: If there was any such analogy we would agree to it.

The Referee: Well, let me swear the witness.

(Witness sworn).

The Referee: Well, I think gentlemen I have studied this petition, and as I understand

it the Sterling estate has a certain oil well. This petition alleges this company is [109] contemplating drilling a well in such a way as might interfere with the well of the bankrupt estate. I don't think this court would have any jurisdiction to prevent this company or any other company from drilling a well, but if it interfered or threatened to interfere with the bankrupt's property in any way, I think to that extent the Court would have jurisdiction.

Mr. Borden: Under the very allegations of the petition, your Honor, it does not appear we are in any way trespassing upon the property of the bankrupt. In other words, we are drilling from our own drill-site. We are not trespassing on their property according to the very allegations of the petition.

I am not here to offer any objection or demurrer because we are appearing here objecting to the jurisdiction of the Court.

The Referee: Your objection may appear; however, the Court must examine in a preliminary way this matter in order to determine whether or not it does have jurisdiction.

Mr. Borden: I appreciate that, your Honor.

The Referee: Very well, you may proceed.

TRUSTEE'S EXHIBIT NO. 1

Regulation Governing Redrilling Operations of
Wells Drilled in Lands of the State of Cali-
fornia.

No permit or consent for redrilling existing oil and gas wells will be granted unless the following conditions can be met:

(1) No point in the redrilled portion of the well shall be farther than 100 feet from the old hole. That is to say, the redrilled hole shall be restricted to a cylinder of 100 feet radius with the old hole as the axis of said cylinder.

(2) The bottom of the redrilled hole shall be located not more than 100 feet from the bottom of the old hole.

(3) No part of the redrilled hole not open to production (blanked off) shall come closer than 50 feet from any existing well other than the abandoned well being redrilled.

(4) No part of the redrilled hole open to production (perforated) shall come closer than 200 feet from the perforated portion of any existing well other than the abandoned well being redrilled.

(5) All drilling within the oil zone shall be done with oil as circulating fluid.

(6) No applications for redrilling will be considered unless it is shown that the proposed redrilling is necessary or desirable because of the poor mechanical condition of the old well.

The undersigned Executive Officer of the State Lands Commission does hereby certify the foregoing to be a true and correct copy of a "Regulation Governing Redrilling Operations of Wells Drilled in Lands of the State of California" duly promulgated by the State Lands Commission at a meeting held in the office of the Director of Finance, State Capitol, Sacramento, December 30, 1938, and that said regulation has not been amended or repealed.

WEBB SHADLE

Executive Officer,
State Lands Commission.

Los Angeles

April 26, 1940.

[Endorsed]: Tr. Exhibit No. 1. Filed Apr. 26, 1940. Ernest R. Utley, M. K.. Referee.

[Endorsed]: Filed Mar 28 1941 R. S. Zimmerman, Clerk. [110]

Mr. Dechter: All right, you may take the witness.

The Referee: Do you want to cross examine the witness?

Mr. Borden: I do, your Honor, without waiving my objection to jurisdiction.

The Referee: Very well. [130]

TRUSTEE'S EXHIBIT NO. 2

Huntington Shore Oil Company

State of California

Department of Finance

Division of State Lands

State Capitol

Sacramento

Agreement for Easement No. 309

Huntington Beach

This Agreement made and entered into this 1st day of March, 1934, by and between the State of California, through the duly appointed, qualified and acting Director of Finance of the State of California, and the duly appointed, qualified and acting Chief of the Division of State Lands of the Department of Finance, State of California, party of the first part, hereinafter called the State, and Jennie B. Durkee, Elizabeth Decker, Edna J. Decker, John R. Johnson and Vera Johnson, husband and wife, Rosa L. Boyd, John T. Kearns and Frances E. Kearns, husband and wife, Jasper N. Chamberlain and Amy Chamberlain, husband and wife, Lewis Pendleton and Mattie Pendleton, husband and wife, Vincent C. Croal, Mary J. Croal, F. H. Rolapp, Receiver of Sunset Pacific Oil Company, a corporation, Sunset Pacific Oil Company, a corporation, Fannie E. Finley, Nathan Nash, Dr. Fred M. Binkley and Mary Belle Binkley, husband and wife, Iona S. Sharp, Nellie P. Mooers, Tide Petroleum Company, a California corporation, Irene Abel, a married woman, John C. Gardiner,

Jacob E. Miller and Virginia Miller, Celestine R. Young, Bertha L. Gregory, J. J. Thompson and M. J. Thompson, John Kniss and Thelma A. Kniss, Sovereign Oil Corporation, a Nevada corporation sometimes erroneously referred to as Sovereign Oil Company, Charles M. Box and John W. Topham, Arvilla Decker, Chas. S. Chaffee and Zaidee M. Chaffee, Huntington Shore Oil Company, Nellie G. Pendleton, William Hazlett, as Trustee for Huntington Shore Oil Company, parties of the second part, hereinafter sometimes called the Grantee, pursuant to the provisions of Chapter 593, Statutes of California, 1933, Sections 654 and 675 of the Political Code, Chapter 402, Statutes of California, 1931, as amended, Chapter 303, Statutes of California, 1921, as amended, and such other statutes as are applicable, and to any and all implied powers of the State of California to compromise litigation, all of which said statutory references are hereinafter referred to as The Act:

Recital

The State of California is the owner in its sovereign and proprietary capacities of certain lands situated in the County of Orange, State of California, hereinafter more particularly described, containing quantities of oil, gas, and other petroleum products; that adjacent to a portion of said lands so owned by the State of California and containing said oil and gas and other petroleum products is the Seventeenth Street Addition to the City

of Huntington Beach, County of Orange, State of California; that upon said Seventeenth Street Addition to the City of Huntington Beach One (1) oil well, commonly known as No. 2, have been drilled by Huntington Short Oil Company, a California corporation, upon real property owned in fee simple by said Jennie B. Durkee, Elizabeth Decker, Edna J. Decker, John R. Johnson, Vera Johnson, Rosa L. Boyd, John T. Kearns, Jasper N. Chamberlain, Amy Chamberlain, Lewis Pendleton and Mattie Pendleton, Vincent C. Croal and Mary J. Croal, F. H. Rolapp, Receiver of Sunset Pacific Oil Company, a corporation, Sunset Pacific Oil Company, a corporation, Fannie E. Finley, Nathan Nash, Dr. Fred M. Binkley and Mary Belle Binkley, Iona S. Sharp, Nellie P. Mooers, and Nellie G. Pendleton, that said oil wells were drilled in such manner as to cause the same to cross lands intervening between the said Seventeenth Street Addition to the City of Huntington Beach and the ordinary high-water mark of the Pacific Ocean and to enter in, upon, and under the said lands of the State of California, to which reference is hereinbefore made, and to enter the oil, gas and/or petroleum deposits thereof, and the bottoms of said wells, and portions of said wells, are now through, in and under said lands of the State of California, and that said wells have drained, taken, and received and are capable of draining, taking and receiving oil, gas, and other petroleum products from the oil and gas deposits of said lands of the State of California; the Grantee

is willing to compensate the State of California for all oil, gas and other petroleum products heretofore drained, taken, and received from said lands of the State of California by means of the said wells known as No. 2 and the State is willing to enter into an agreement with the Grantee whereby compensation may be had for all such oil, gas and other petroleum products produced through the said wells, and to permit the Grantee to continue to take oil, gas and other petroleum products from said lands of the State of California, through said oil wells known as No. 2 and subject to the terms, covenants and conditions hereinafter set forth. The said lands belonging to the Grantee and the said lands belonging to the State of California, to which references are hereinbefore made, are more particularly hereinafter described,

Now, Therefore, Witnesseth:

Section 1. That the State, in consideration of the royalties to be paid and the covenants to be observed as herein set forth, does hereby grant to the Grantee easements appurtenant to said lands of Grantee first hereinafter described, through, in and under the said lands belonging to the State of California hereinafter more particularly described (which said easements are more particularly hereinafter described), and the right to drain, take, receive, extract, remove, produce and use oil, gas, and other petroleum products, through those certain oil wells commonly known and designated as No. 2 respectively, the tops of which said wells are located

upon those certain lands of Grantee situated in the County of Orange, State of California, and more particularly described as follows, to-wit:

Lots Two (2) in Block Three Hundred Nineteen (319) of "Huntington Beach, Seventeenth St. Section", as shown on a Map recorded in Book 4, page 10 of Miscellaneous Maps, records of Orange County, California,

and through any other wells which may hereafter be drilled upon said property with the consent, in writing, of the Chief of the Division of State Lands being first had and obtained, and subject to the terms, covenants, and conditions herein contained, in so far as applicable, and otherwise in accordance with rules and regulations of the Division of State Lands now promulgated, and such reasonable rules and regulations of said Division of State Lands as may be promulgated hereafter from those certain lands in the Pacific Ocean belonging to the State of California situated in the County of Orange, more particularly described as follows:

Beginning at a point in the ordinary high water mark of the Pacific Ocean where the North-South quarter section line of Section 4 T. 6 S., R. 11 W., S. B. B. M., projected in a straight line southerly, intersects said ordinary high water mark; thence southeasterly along said ordinary high water mark a distance of three (3) miles to a point in said ordinary high water mark; thence southwesterly at right an-

gles with said ordinary high water mark and in a straight line three (3) miles from said ordinary high water mark to a point in the Pacific Ocean; thence northwesterly along a line which is parallel to said ordinary high water mark a distance of three (3) miles to a point in the Pacific Ocean; thence northeasterly in a straight line to the point of beginning, (hereinafter sometimes referred to as said lands of the State of California);

for a period of twenty (20) years from the date hereof, with the preferential right in the Grantee to renew this agreement for successive periods of ten (10) years each, upon such reasonable terms and conditions as may be prescribed by the State, acting through the Chief of the Division of State Lands, hereinafter sometimes referred to as the Chief, unless otherwise provided by law at the time of the expiration of such periods.

Section 2. In consideration of the foregoing, the Grantee hereby agrees:

(a) To furnish a corporate surety bond, approved by the Chief, in the penal sum of two thousands (2,000) dollars, for each easement herein granted, conditioned upon compliance with the terms, conditions and covenants of this agreement.

(b) To pay to the State of California a royalty in accordance with the formula and schedule marked Exhibit "A", attached hereto, and by reference made a part hereof, on the oil produced, drained,

and saved from the said lands of the State of California hereinbefore described, or on demand of the State, acting through the Chief, a percentage of the oil produced in accordance with said Exhibit "A", the royalty when paid in value to be due and payable monthly not later than the 25th of each calendar month following the calendar month in which produced; and when paid in kind, to be delivered in the field and taken by the State at the receiving tanks of the Grantee on twenty-four (24) hours notice of the Grantee that a tankful of oil is ready for delivery; to pay to the State of California at the times and in the manner herein specified for the payment of royalty on oil, one-fifth ($1/5$) of the net proceeds received by the Grantee upon all gas, whether dry or wet, and upon all casinghead gasoline, produced and sold. Unless such gas or casinghead gasoline is sold pursuant to a sales-contract approved by the Chief, the price shall be the reasonable market price as fixed by the Chief. In case the gas produced and sold has a value both for casinghead gasoline content and as a dry gas from which the casinghead gasoline has been extracted, then the royalty above provided shall be paid upon the proceeds of each of such values.

The State may take its royalty dry gas in kind at its option, delivery thereof to be made at the casinghead manufacturing plant where produced, or at such other place as the parties hereto may agree.

(c) To file with the Division of State Lands of the Department of Finance true and correct copies of all sales-contracts for the disposition of oil, gas and other petroleum products produced hereunder, and in the event the State, acting through the Chief, shall elect to take such oil or gas royalty in money instead of oil or gas, not to sell or otherwise dispose of the oil or gas produced hereunder, except in accordance with such sales-contracts or other method first approved in writing by the State, acting through the Chief.

(d) To furnish monthly statements in detail in such form as may be prescribed by the State, acting through the Chief, showing, with respect to said wells, the amount, gravity, quality, and value of all oil produced, saved and/or sold, the amount of gas produced, saved, and sold and the amount of casing-head gasoline received or sold by the Grantee therefrom during the preceding calendar month, as the basis for computation for royalties due the State; to keep full and complete records and accounts of the operation and of the production of oil and gas and of the manufacture of casinghead gasoline derived from each and every well for which an easement is herein granted, which said records and accounts shall be available at all reasonable times to the inspection and examination by any person authorized by the State; to consent to an examination of books and records of any individual, association, or corporation which has transported for

or received from the Grantee any oil, gas or other petroleum products produced from said wells, or other wells belonging to the Grantee; to permit inspection at all reasonable times, by any person authorized by the State, of the said lands belonging to the Grantee hereinbefore described, and the said wells, improvements, machinery and fixtures used in connection therewith.

(e) To furnish, concurrently with the execution of this agreement, statements showing the quality, quantity and gravity of all oil, gas, and other petroleum products heretofore produced from said wells and manufactured from the products of said wells, and the amounts received therefor; to file, concurrently upon the execution of this agreement, with the Division of Oil and Gas of the Department of Natural Resources of the State of California, as confidential information logs of said wells, and all surveys of said wells, and any and all plats thereof, and other related information; to waive the statutory right of the Grantee to the inspection by the Director of Finance or the Chief or a duly authorized employee of either of said data and information at any time during the life of this agreement; to waive the statutory right of the Grantee to the use by the Director of Finance or the Chief or a duly authorized employee of either of any other information filed with said Division of Oil and Gas by the Grantee; to consent to the withdrawal of such logs and surveys of said wells, and any and all plats

thereof, and other related information, either in original form or by making copies thereof, from the said Division of Oil and Gas at any time during the life of this agreement, when determined desirable by the Director of Finance of the State of California, for the purpose of making public record of the same in the Division of State Lands, Department of Finance, State of California. Any and all information filed by the Grantee with the said Division of Oil and Gas shall be available at all times to the State for the purpose of forcing compliance with the terms, covenants and conditions of this agreement and rules and regulations now promulgated by the Division of State Lands and reasonable rules and regulations which may hereafter be promulgated by the Division of State Lands.

(f) To pay when due all taxes lawfully assessed and levied under the laws of the State, County, City and United States of America, upon improvements, oil gas and other petroleum products produced from the lands hereinbefore described, other than taxes on the State's royalty oil, gas and petroleum products; to accord all workmen and employees freedom of purchase and to pay wages due workmen and employees in accordance with the laws of the State of California and of the United States of America relating to employment of workmen. To comply with all laws of the State of California and all rules and regulations of any agency of the State of California having jurisdiction there-

in, and all laws of the United States of America, and all rules and regulations of any agency of the United States of America having jurisdiction therein, relating to the drilling, maintenance and operation of oil and gas wells and production of oil and gas.

(g) Not to drill into the said lands of the State of California any wells for the production of oil, gas and petroleum products, or otherwise, without the consent in writing of the Chief thereto first had and obtained; nor to redrill, lengthen or deepen without the consent in writing of the Chief first had and obtained, and then only in strict compliance with rules and regulations promulgated by the Chief, and other agency of the State having jurisdiction thereof, said wells commonly known and designated as No. 2, respectively; provided, however, if consent in writing is first had from the Chief, to redrill, lengthen or deepen any one or more of said wells commonly known and designated as No. 2 the State shall not exact any royalty or royalties in addition to those herein specified from the Grantee in consideration of the granting of such permission, and further provided, that when due to collapse of casing or other mechanical difficulty or obstruction in any of said wells, it becomes reasonably necessary to redrill any such well, the Grantee may carry on and complete the necessary work of redrilling any such well upon notice of intention, specific in detail and precise in character, of the

proposed work, being given to the State at least ten (10) days before any such work is commenced, and said work of redrilling any such well shall be done in strict conformity with the laws of the State of California and the rules and regulations promulgated thereunder by any agency of the State having jurisdiction therein without regard to whether such rules and regulations be general or specific or both; and an accurate survey of any new hole or side-tracking shall be made at intervals of not less than one hundred (100) feet, and shall immediately be filed with said Division of Oil and Gas subject to the provisions contained in subdivision "(e)" of Section "2" hereof, relating to the inspection and use by the State and withdrawal by the Director of Finance. All such operations shall be carried on in strict accordance with the detailed plan of said work as specified in such notice and be varied only with the written consent of the State first had and obtained.

(h) To exercise reasonable diligence consistent herewith in the operation of said wells while said products can be obtained in paying quantities, and not to unreasonably or unnecessarily suspend continuous operations except with the consent of the State, acting through the Chief. To carry on all operations hereunder in good workman-like manner in accordance with approved methods, having due regard for the prevention of waste of oil and unreasonable waste of gas developed through said

wells, or the entrance of water through said wells to the oil sands or oil bearing strata to the destruction or injury of the oil deposits, or future productive operations and the health and safety of workmen and employees; to plug securely, in the manner prescribed by any agency of the State having jurisdiction thereof, any well before abandoning the same so as to effectively stop the flow of water from the oil and gas bearing strata; to conduct all drilling and related productive operations subject to the inspection of authorized officials of the State; to furnish to the State detailed drawings of all oil lines in any manner attached to the said wells and to report changes or additions promptly; to gauge all oil, to measure all gas, whether dry or wet, in accordance with the rules and regulations now or which may hereafter be promulgated by the Chief, provided the State, through the Chief, shall have, at any time, the right to gauge all oil and measure all gas, and in the event of a disagreement between the State and the Grantee concerning the quality and/or quantity of the oil and/or gas so gauged and/or measured, the burden to establish the incorrectness of such gauging and/or measuring shall rest upon the Grantee, and the Grantee is hereby given the right to establish, by proper court proceeding, the correct quality and/or quantity of such oil and/or gas so gauged and/or measured; to carry out at the expense of the Grantee all reasonable orders and requirements of the State acting

through the Chief, relative to prevention of unreasonable waste and preservation of the property and the health and safety of workmen, and on failure so to do the State, through its agent or agents, shall have the right to enter on said lands of Grantee to repair or prevent such unreasonable waste at Grantee's cost; to abide and conform to the rules and regulations in force at the time this easement is granted, covering matters referred to in this paragraph, and to comply with such reasonable rules and regulations as may from time to time be issued by the State, acting through the Chief, or any other agency of the State having jurisdiction therein; provided, however, that the Grantee shall not be responsible for delay or casualties occasioned by a cause beyond the control of the Grantee.

Section 3. The State expressly reserves:

(a) The right to grant easements or crossings for wells over, under or along the courses of said wells of the Grantee, and nothing herein contained shall be construed as limiting the powers of the State of California, or of the State, to lease, convey, or otherwise transfer or encumber, during the life of this agreement, said lands of the State for any purpose whatsoever; and this agreement shall not be construed as granting to the Grantee the exclusive privilege to take oil, gas, or other petroleum products from said lands, or any portion thereof, of the State of California.

(b) Full power and authority to carry out and enforce all of the provisions of Section 15 of said

Chapter 303, Statutes of California, 1921, as amended, to the extent, if any, the same is legally applicable, to insure the sale of the production of such oil, gas and other petroleum products from said lands of the State of California to the public at a reasonable price to prevent monopoly and to safeguard the public welfare.

(c) The right to use any and all surplus gas, whether dry or wet, produced from the said wells for the purpose of repressuring the field provided that such repressuring shall not unreasonably interfere with or cause damage to the said wells of the Grantee.

Section 4. The Grantee shall assume all responsibility in connection with the maintenance and operations of said oil wells, and shall at all times hold the State free and harmless from any liability to the State, its officers, agents and employees on account of any negligent maintenance or operations on the part of the Grantee and the officers, agents and employees of the Grantee.

Section 5. In the event crossings are made or attempted to be made by others across the lands, hereinbefore described belonging to the Grantee for the purpose of entering into or upon said lands of the State of California, the Grantee shall join with the State in any course of action determined by the State for the purpose of preventing any such crossing or crossings, or if such crossings have been made, for the purpose of abatement of the same.

Section 6. This agreement does not and shall not be construed to authorize or purport to authorize any rights of way or easements to the Grantee in, through or under intervening lands for the purpose of reaching the said lands of the State of California hereinbefore described or for the purpose of maintaining and operating said oil wells in and through any land or lands other than the said lands of the State of California hereinbefore described; and further, the cost of obtaining any and all rights of way or easements necessary to effect an entrance in and to said lands of the State of California shall be at the sole cost and expense of the Grantee.

Section 7. The Grantee may use oil and/or gas produced from said wells, or gas received in exchange for such gas so produced for fuel purposes, for necessary operations of said wells on said premises, or for the drilling of new wells into said lands of the State of California, or for recirculation of any of said wells, or for repressuring the oil sand or sands from which said well may be producing, even though such gas is injected into such sand through another well, the bottom of which is in said lands of the State of California, free from any royalty charges thereon.

If and when it becomes necessary to dehydrate said oil, the Grantee may deduct the actual cost of such dehydration but not to exceed five (5) cents per barrel of net oil; such deduction shall be prior to the calculation of the royalty to the State of the said oil so dehydrated.

Section 8. The State's royalty portion of oil, gas or gasoline shall at all times be the sole property of the State, whether or not reduced to possession, and possession by the Grantee thereto at any time shall be as Trustee thereof for the State until full settlement of the royalty interests to the State shall have been made. The Grantee shall be empowered to sell and convey good title to the full amount of royalty oil, gasoline or dry gas produced and saved, if and when such sales have been approved in writing by the Chief, as herein provided.

Section 9. The Grantee may, upon the consent of the State, acting through the Chief, first had and obtained in writing, surrender and terminate this easement and agreement as a whole or as to any well covered by same upon the payment of all royalties or other obligations due and payable to the State and upon the payment of all wages due and payable to workmen and employees by the Grantee, and in no case shall such termination be effective until the Grantee shall have complied with all then existing laws relative to the abandonment of oil or gas wells.

Section 10. If the Grantee shall fail to comply with the provisions of the Act so far as applicable or make default in the performance or observance of any of the terms, covenants and stipulations hereof, or of the rules and regulations of the Division of State Lands now promulgated, and all reasonable rules and regulations which may hereafter be promulgated, and such default shall continue for the period of thirty (30) days after written notice

thereof by the State, acting through the Chief, and no steps shall have been taken within that time, in good faith, to remedy said default, then the State, acting through the Chief, may enter upon the premises of the Grantee and take possession of the same for the purpose of operating said wells of the Grantee until such time as all money defaults of the Grantee to the State have been fully satisfied, or if such default cannot be satisfied by the payment of money, then the Chief shall have the right and power to cancel the respective easement and/or to close said well or wells which are not being conducted or operated in the manner prescribed by the provisions of this easement, the rules and regulations of the Division of State Lands now promulgated, and reasonable rules and regulations of the Division of State Lands which may be hereafter promulgated; but this provision shall not be construed to prevent the exercise by the State, through the Chief, of any legal or equitable remedy which the State might otherwise effect. The waiver of or failure of the State to act upon any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this easement for any other cause of forfeiture or for the same cause occurring another time.

Section 11. All notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

(To the State)

Division of State Lands
Department of Finance
State Capitol
Sacramento, California
and

(To the Grantee)

William Hazlett, Trustee,
Huntington Shore Oil Company,
918 Security Building,
Los Angeles, California

The addresses to which the notices shall or may be mailed, as aforesaid, to either party, shall or may be changed by written notice given by such party to the other as hereinabove provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

Section 12. It is further covenanted and agreed that each obligation herein shall extend to and be binding upon, and every benefit hereto shall inure to, the heirs, executors, administrators, successors and assigns of the respective parties hereto. Singular shall include the plural whenever applicable and the neuter gender shall include the feminine and masculine, and vice versa, whenever used in this agreement.

Section 13. It is hereby understood and agreed that this agreement, and, all the benefits derived therefrom to the parties herein, are for the sole and exclusive benefit of the parties hereto.

Section 14. It is hereby agreed that the amount of the royalty due and payable by the Grantee to the State for all oil and gas and other petroleum products produced by the Grantee from said wells hereinbefore mentioned, up to the date of this agreement, is the sum of One Thousand Ninety Six and 28/100 (1096.28) Dollars, which the State agrees to accept and the Grantee agrees to pay in 48 equal monthly installments, commencing on the 1st day of March, 1934, and the Grantee further agrees to pay to the State interest at the rate of six (6) per centum per annum on the unpaid balance of said principal sum as the same exists from time to time, which said interest shall be due and payable annually commencing one (1) year from the date of this agreement, and annually thereafter until said principal sum is fully paid.

Section 15. It is hereby agreed between the parties hereto that this agreement may be terminated, and any of the provisions hereof may be modified and/or amended, upon the mutual consent of the parties hereto.

Section 16. This agreement, or any easement hereby granted, shall not be assigned, either in part or in whole, voluntarily or involuntarily, without the consent in writing of the Chief first had and obtained.

Section 17. The easement granted by this instrument is more specifically described as follows, to-wit:

An easement in and to, under and through, said lands of the State embracing and consisting of

separate and distinct cylindrical areas, each 24 inches in diameter and extending throughout the full length, course and distance of said respective wells herein before mentioned, in so far as the same traverse ore are in, upon or under said lands of the State, the center line of each of said respective cylindrical areas being the center line of each of said respective wells as disclosed by the surveys or plats thereof filed with the said Division of Oil and Gas of the said Department of Natural Resources and/or as verified or altered by subsequent survey, if any, and in addition thereto, similar cylindrical areas following the respective courses and directions of the center lines of such other wells as may hereafter be drilled by Grantee into and through the lands of the State with the written consent of the State or Chief, as hereinbefore provided, together with the right, under and in compliance with the terms of this instrument, to enter in and upon and to use said easement, or cylindrical areas for the purpose of conducting therein or thereon the operations authorized by the terms of this agreement.

In the event any agreement or agreements are hereafter entered into between the State acting through the Director of Finance and/or the Chief of the Division of State Lands, and persons, firms, or corporations other than the Grantee herein, pursuant to the authority under which this agreement is made, which said agreement or agreements shall relate to the taking of oil, gas, and petroleum prod-

ucts from said lands of the State of California through wells drilled upon lands of Seventeenth Street Addition to the City of Huntington Beach, California, the Grantee shall have the option to adopt the form of any such agreement in toto, in lieu of this agreement, effective from date of such adoption which shall not be later than ninety (90) days after Grantee has knowledge of any such new agreement or agreements.

Section 18. Should the State elect to take its royalty oil or dry gas in kind, notice of thirty (30) days shall be given to the Grantee of the State's intention so to do; on such election, the State shall continue to take its said royalty oil and/or dry gas (as the case may be) in kind for a period of six (6) months from the time it commenced to take such royalty oil and/or dry gas (as the case may be) in kind, and thereafter for like periods of six (6) months unless the State shall, at least thirty (30) days prior to the end of any such six (6) months' period, notify the Grantee in writing of the State's election to cease taking its royalty oil and/or dry gas (as the case may be) in kind, and to take the same in value.

Anything to the contrary herein notwithstanding, the Grantee, if operating a refinery, and if the State is not then taking the same in kind, may use such oil or gas, and account to the State for the State's royalty in accordance with the provisions of this agreement.

In witness whereof, the parties hereto have executed or caused to be executed this agreement, the day and year first above written.

STATE OF CALIFORNIA

By ROLLAND A. VANDEGRIFT

Rolland A. Vandegrift

Director of Finance

By W. S. KINGSBURY

Chief of the Division of State Lands

Department of Finance

Form approved March 12, 1934.

U. S. WEBB

Attorney General of California

[Seal] HUNTINGTON SHORE OIL
COMPANY

By W. M. CRAWFORD

President

By J. D. STERLING

Secretary

Executed Oct. 19, 1904.

WILLIAM HAZLETT

William Hazlett,

As Trustee for Huntington

Shore Oil Company

Executed June 24, 35.

CHARLES R. DETRICK

Mgr.

Huntington Shore Oil Company

HUNTINGTON SHORE OIL COMPANY
HOLDERS OF LAND OWNERS PERCENTS

Helen N. Adams	1/2 of 1%	By J. D. Sterling	(Attorney-in-Fact)
Felix Aubuchon & Mrs. Felix Aubuchon	1/8 of 1%	By J. D. Sterling	"
Rosa L. Boyd	1/8 of 1%	By J. D. Sterling	"
Albert A. Bernstein	1/8 of 1%	By J. D. Sterling	"
Edwin Bramson	1/2 of 1%	By J. D. Sterling	"
Ada O. Bisbee	3/8 of 1%	By J. D. Sterling	"
Nellie E. Cunningham	1/3 of 1%	By J. D. Sterling	"
Vineent C. & Mary J. Croal	1/4 of 1%	By J. D. Sterling	"
H. L. Crane and Mabel C. Crane	1%	By J. D. Sterling	"
Martha Jean Crane	1/8 of 1%	By J. D. Sterling	"
Mrs. L. Orville Coate	1/4 of 1%	By J. D. Sterling	"
Wilber T. Chaffee	1%	By J. D. Sterling	"
Jasper M. & Amy Chamberlain	1/4 of 1%	By J. D. Sterling	"
Jennie B. Durkee	1%	By J. D. Sterling	"
Effie L. Douglas	1/3 of 1%	By J. D. Sterling	"
Elizabeth Decker	1/2 of 1%	By J. D. Sterling	"
Edna J. Decker	1/3 of 1%	By J. D. Sterling	"
Helen and Mary Errebo	1%	By J. D. Sterling	"
Fannie E. Finley	1/8 of 1%	By J. D. Sterling	"
Caroline E. Fisk	1/4 of 1%	By J. D. Sterling	"
Berta L. Gregory	1/3 of 1%	By J. D. Sterling	"

Joe Goussak & Ada Goussak	1/2 of 1%	By J. D.	Sterling	(Attorney-in-Fact)
William Gosau and Edna Gosau	2%	By J. D.	Sterling	"
H. M. Gilmore or Lula F. Gilmore	1/4 of 1%	By J. D.	Sterling	"
Rosa L. Gilmore	1/8 of 1%	By J. D.	Sterling	"
Anna M. Hasenyager	1/8 of 1%	By J. D.	Sterling	"
Rosa Heller	1/4 of 1%	By J. D.	Sterling	"
Mrs. Gussie Houssels	1/4 of 1%	By J. D.	Sterling	"
T. H. Hawkins	1%	By J. D.	Sterling	"
Grace M. Hawkins	1%	By J. D.	Sterling	"
John R. Johnson & Vera Johnson	1/2 of 1%	By J. D.	Sterling	"
Effie A. Kettrey	1/8 of 1%	By J. D.	Sterling	"
Florence Karker	1/3 of 1%	By J. D.	Sterling	"
John Kniss & Thelman Kniss	1/2 of 1%	By J. D.	Sterling	"
John T. Kearns & Francis E. Kearns	1%	By J. D.	Sterling	"
Zena Kapelman as Trustee for Esther Kapelman and Annie Kapelman	1/2 of 1%	By J. D.	Sterling	"
Charles Kratsch and Charlotte Kratsch	1/3 of 1%	By J. D.	Sterling	"
Carter H. Lane	3/8 of 1%	By J. D.	Sterling	"
Fred Lovett	1/8 of 1%	By J. D.	Sterling	"
Mary A. Leslie	1/3 of 1%	By J. D.	Sterling	"
Florence E. Markle	1/4 of 1%	By J. D.	Sterling	"
Sadie McConaughy	1/8 of 1%	By J. D.	Sterling	"
Frank A. Moulton & Margaret V. Moulton	1/3 of 1%	By J. D.	Sterling	"

			(Attorney-in-Fact)
Flora Moore	1/8 of 1%	By J. D. Sterling	"
Alice McClelland	1/6 of 1%	By J. D. Sterling	"
Nellie P. Mooers	1/8 of 1%	By J. D. Sterling	"
Ada M. Miner	1/4 of 1%	By J. D. Sterling	"
Vanie Norris	1/8 of 1%	By J. D. Sterling	"
Nathan Nash	1/2 of 1%	By J. D. Sterling	"
George I. Orenstein	1/2 of 1%	By J. D. Sterling	"
Sam N. Oresntein	1/2 of 1%	By J. D. Sterling	"
Lewis and/or Mattie and/or Nellie			
G. Pendleton	1/4 of 1%	By J. D. Sterling	"
Minnie Patrick	1/8 of 1%	By J. D. Sterling	"
Emma D. Richardson	1/8 of 1%	By J. D. Sterling	"
William H. and/or Anna Rifkind	1/2 of 1%	By J. D. Sterling	"
Joseph F. Reed or Agnes Reed	1/8 of 1%	By J. D. Sterling	"
Henry C. Roher	1/8 of 1%	By J. D. Sterling	"
Alice M. Sexton	1/4 of 1%	By J. D. Sterling	"
D. L. Sylvester or Kate B. Sylvester	1/3 of 1%	By J. D. Sterling	"
Elmer R. Stokesbury	1%	By J. D. Sterling	"
Louis and Sylvia Solomon	1/2 of 1%	By J. D. Sterling	"
Nat Shipper and Betty Shipper	1/4 of 1%	By J. D. Sterling	"
Harvey Snyder or Ruth Snyder	1/2 of 1%	By J. D. Sterling	"
J. W. Stokesbury	1%	By J. D. Sterling	"
Iona S. Sharp	1/2 of 1%	By J. D. Sterling	"
Katherine E. Smith	1/4 of 1%	By J. D. Sterling	"

M. J. and J. J. Thompson	1/3 of 1%	By J. D.	Sterling	(Attorney-in-Fact)
Ella M. Teeple	2%	By J. D.	Sterling	" "
Abe Ullman and Sara Ullman	1/2 of 1%	By J. D.	Sterling	" "
Louis Ullman and Annie Ullman	1/2 of 1%	By J. D.	Sterling	" "
Zillah Van Arsdale	1/8 of 1%	By J. D.	Sterling	" "
Sarah J. Woods	1%	By J. D.	Sterling	" "
Sara M. Wright	1%	By J. D.	Sterling	" "
Cora D. Whipple	1%	By J. D.	Sterling	" "
Bertha Woods Walker	1/4 of 1%	By J. D.	Sterling	" "
Texanna Wood	1/4 of 1%	By J. D.	Sterling	" "
Jacob Yaruss	1%	By J. D.	Sterling	" "
Joseph P. Zimmer	1/4 of 1%	By J. D.	Sterling	" "
Celestine R. Young	1/8			
	1/2 of 1%	By J. D.	Sterling	" "

[Endorsed]: Tr. Exhibit No. 2. Filed April 26, 1940. Ernest R. Utley, Referee.

[Endorsed]: Filed Mar. 28, 1941. R. S. Zimmerman, Clerk.

TRUSTEE'S EXHIBIT No. 3

State Lands Commission
Division of State Lands
Department of Finance
State of California

CERTIFICATE

I, Webb Shadle, Executive Officer of the State Lands Commission of the State of California, do hereby certify the attached to be a full, true and correct copy of a memorandum dated February 14, 1940, from Tracy L. Atherton to Webb Shadle, on file in the office of the State Lands Commission, Room 302 California State Building, Los Angeles, California; that I have compared the same with the original and that it is a correct transcript therefrom and of the whole of the said memorandum.

Witness my hand this 26th day of March, 1941.

WEBB SHADLE

State of California
Department of Finance
Division of State Lands

Date February 14, 1940

Office: Los Angeles

To: Webb Shadle—Los Angeles

From: T. L. Atherton

Subject: Proposed redrill—Easement No. 290-1

A study of the surveys as plotted and their intersection with the inclined planes shows that under our present rule it would be impossible to redrill the well under the above easement as at the following

inclined planes the well 290-1 is located within 100 feet of the well or wells as indicated.

Inclined plane

3600 ft.	Clear
3700 “	309-2A
3800 “	309-2A and Wil. 18
3900 “	309- “ “ “ “
4000 “	“
4100 “	Clear

TRACY L. ATHERTON (Signed)

T. L. A.

Copy

Intradivision Memorandum

[Endorsed]: Tr. Exhibit No. 3. Filed March 27, 1941. Ernest R. Utley, Referee.

[Endorsed]: Filed March 28, 1941. R. S. Zimmerman, Clerk.

TRUSTEE'S EXHIBIT No. 4

Huntington Beach Townsite Association

SUB-SURFACE CROSSING PERMIT

Permit from Huntington Beach Townsite Association, a corporation, hereinafter referred to as "Association", to Huntington Shore Oil Company, a member of said Association, hereinafter referred to as "Member".

Article I.

1. The Association has simultaneously with the acceptance by Member of this permit, entered into

an agreement with Standard Oil Company of California, and others, hereinafter referred to as "Standard Oil Agreement", a copy of which said agreement is attached to and made a part of this agreement and marked Exhibit "A".

2. Subject to the terms, conditions and limitations of this permit hereinafter set forth, and by virtue of the right and power given to Association by said Standard Oil Agreement, and for the same period as given by said Standard Oil Agreement to this Association, Association hereby gives Member a sub-surface crossing permit for Member's well in the City of Huntington Beach, California, known and designated as Huntington Shore Oil Company Well and the right to use, maintain, repair and operate said well in its existing location and course under, through and across lands of those corporations designated as "Permitters" in said Standard Oil Agreement, within the strip of land described as follows:

In the City of Huntington Beach, California, extending from the oceanward projection of the westerly side of 13th Street to the oceanward projection of the easterly side of 23rd Street between the landward side of Ocean Avenue and the high tide line.

Article II.

This permit is given upon and subject to each and all of the terms and conditions, limitations and stipulations hereinafter set forth, and upon accept-

ance hereof Member thereby agrees to, and agrees to be bound by, all of said terms, conditions, limitations and stipulations.

1. This permit is, and at all times shall be, subject in each and every particular to the terms, conditions and stipulations of said Standard Oil Agreement, and that any revocation or cancellation or termination of the permit given Association by said Standard Oil Agreement shall automatically revoke or cancel or terminate this permit.

2. All statements, representations, descriptions, plats, surveys and data which said Standard Oil Agreement states have been made or furnished by Association to Permitters named in said Standard Oil Agreement, were made or furnished to Association by Member for the purpose of enabling Association to make or furnish them to the said Permitters, and shall be deemed to have been made direct by Member to said Permitters in order to induce said Permitters to give said permit to Association, and that all thereof are true and accurate.

A. Member, with reference to said well, shall and does hereby assume each and every responsibility, duty and obligation imposed by said Standard Oil Agreement on Association; and Member shall and does hereby relieve Association from all such responsibility, obligation and duty; and shall at all times hold and keep Association free and harmless from any and all liability, cost or expense; and should Association make any payment, or incur any expense by reason of any obligation or duty men-

tioned in this paragraph and imposed upon it by said Standard Oil Agreement, Member shall immediately on demand of Association reimburse Association therefor.

4. This permit is personal to the Member with reference to said well. It shall not be assigned in whole or in part without the written consent of the Association; furthermore, any act or circumstance which, under and by virtue of the terms of said Standard Oil Agreement, would authorize said Permitters to terminate the permit given to the Association by said Standard Oil Agreement, or to do or take any other act, shall also authorize and empower the Association to terminate this permit, or to do or take any such other act.

5. Should the Association incur any cost or expense in enforcing or effectuating this agreement Member shall repay the same to the Association upon demand.

6. Upon the termination of this permit, whether by expiration of its term or by act of said Permitters or by act of this Association or otherwise, Member agrees to abandon and plug said well in the manner provided for in Condition (d) of said Standard Oil Agreement, but if Member fails to commence the work of abandoning within ten (10) days after such termination, and thereafter fails to diligently prosecute the same to completion, Association shall have the right to enter the lands of Member, as the agent of Member, and at the

risk of Member to abandon and plug such well in such manner as the Association may deem proper, or as may be required by said Permitters, and all cost and expense of such abandonment and plugging shall be paid by Member to the Association upon demand; and in case of suit to collect the same Member agrees to pay the Association in addition a reasonable attorney's fee to be fixed and allowed by the court.

7. Any notice, information or data to be given the Association by virtue of the terms of this agreement shall be delivered in writing personally to an Officer of the Association at the office of the Association, or shall be mailed by registered mail, postage prepaid, to the Association at Huntington Beach, Orange County, California.

8. Any notice or demand to be given to Member by the Association shall be by mailing notice thereof to the Member by registered mail, postage prepaid, at the following address: Hubert F. Laugharn, 633 Subway Terminal Bldg., Los Angeles, Calif. or at such other address in the County of Orange or the County of Los Angeles, State of California, as Member may from time to time designate in writing by notice to the Association, given as herein required.

9. Subject to all the terms and conditions of this permit, it shall be binding upon the successors and assigns of the parties hereto.

In Witness Whereof, Huntington Beach Townsite Association has executed this permit in dupli-

cate on the 11th day of (initialed H.S.H.) May,
1937 (initialed H.S.H.)

[Seal]

HUNTINGTON BEACH TOWN-
SITE ASSOCIATION,

By EUGENE [Illegible]

President.

H. S. HANCOCK

Asst. Secretary.

Accepted:

HUBERT F. LAUGHARN

Trustee for Huntington Shore
Oil Company, Bankrupt

.....
Member

HUBERT F. LAUGHARN

Trustee for Jack Dave Ster-
ling, Bankrupt

HUBERT F. LAUGHARN

Trustee for Jack Dave Ster-
ling, Bankrupt

(Huntington Investment
Corporation)

HUBERT F. LAUGHARN

Attorney in Fact for royalty
interests as per attached list

Huntington Shore Oil Company

List of names of persons having interests in the
Huntington Shore Oil Company, and Huntington
Shore Well #2 who have given powers of attorney

to Hubert F. Laugharn to execute the surface crossing permit, to-wit:

R. H. Garrison

H. S. Fentress

Elmer R. Stokesbary

Mrs. Jeanette Stokesbary

Wm. H. Rifkind

Mrs. Anna Rifkind

Rosa L. Boyd

George R. Finley, Executor Estate Fannie E.
Finley

Fanny A. Larson

Evangeline Adams Spozio

Marion Adams

Louis Solomon

Sylvia Soloman

David W. Butler

Ralph J. Brown

Preston R. Wyrick

Anglo California National Bank of San Francisco, by A. N. Baldwin, Vice President and
R. H. Holmberg, Assistant Secretary.

Henry C. Roher

Mrs. Edna L. Gosan

William Gosan

Joe Goussak

Ada Goussak

Albert G. Berenstein

Charlotte E. Berenstein

Sam N. Orenstein

Faye Orenstein

George I. Orenstein

George A. Coffey

Spencer E. Sully

Katherine E. Smith

Max Drefke

Mathilda Drefke

Fred Lovett

Virginia Rickman

Nat Shipper

Betty Shipper

Harry Oreck

Rose Oreck

Mary Errebo

Mrs. L. Orrille Coate

Mr. I. Searles, Attorney in fact for E. T. Chese
Golden Gate Oil Co., by H. R. Hamilton, Presi-
dent and S. F. Ballif, Jr., Secretary

John R. Kennedy

Peter Oreck

Sarah Oreck

Mrs. Lucy K. Latham

Herbert R. Kendall

Emma F. Hale

L. O'Rourke

Herbert M. Baruch

C. E. Parkman

Mrs. Kitty Parkman

George P. Wilson

C. P. Robinson

Sarah J. Woods

Florence E. Markle
Bertha Woods Walker
Mrs. Gussie Houssels
Celistine R. Young
Mary A. Leslie
Lewis Pendleton
Mattie Pendleton
Joseph P. Zimmer
Robert E. Gilmore
Ross L. Gilmore
Iona S. Sharp
Vera Johnson
Jasper N. Chamberlain
Sadie McConoughy
Harvey B. Snyder
Edna J. Decker
Elizabeth Decker
James J. Thompson
W. J. Thompson
Homer M. Gilmore
Lulu Gilmore
Nellie E. Cunningham-Beyer
Herman Sterling
Leo Pearlston
Dayton H. Boyer
Joseph Smooke
Pacific National Bank of San Francisco, Trust-
tee under selected Income Royalties No. 2.,
by D. W. Holgate, Trust Officer.
Joseph F. Reed

Agnes Reed

Zena Kapelman

Harvey F. Nelson

Earl Foremaster

Frans Nelson Petroleum Company, by H. F.
Nelson, President

Esther Strin

Lena Abramson

Morris Abramson

Meyer M. Brill

Cele Brill per W.M.B.

Jack Strin

Nathan Smooke

Ben Sterling

David B. Rosenthal

HUBERT F. LAUGHARN

Attorney-in-Fact for above per
cent holders in accordance
with powers of attorney at-
tached hereto.

Huntington Shore Oil Company
(Jack Dave Sterling, Bankrupt)

The following are names of royalty interests not
located by the undersigned Trustee:

Minnie M. Kruse

Flora Moore

Violet Olmstead

Anna Hasenyager

R. A. Calhoun

C. W. Patrick

Jennie B. Durkee

Caroline E. Fish

Carter H. Lane

Minnie Patrick

Frank A. Moulton

Commonwealth Trust Company, Trustee for
Empire Investors Trustee, Series A

HUBERT F. LAUGHARN

Trustee of Jack Dave Sterling
(Huntington Shore Oil Com-
pany)

Bankrupt.

Holders of royalty interests on which no final
determination of validity has been made, the same
held as security only.

Oil Well Supply Company

Bank of America National Trust & Savings As-
sociation

HUBERT F. LAUGHARN

Trustee of Jack Dave Sterling
(Huntington Shore Oil Com-
pany)

Bankrupt.

Agreement between Standard Oil Company
of California, a corporation, Huntington Beach
Company, a corporation, Pacific Electric Rail-
way Company, a corporation, and Pacific

Electric Land Company, a corporation, first parties, hereinafter collectively referred to as "Permitters", and Huntington Beach Townsite Association, a corporation, hereinafter referred to as "Association", second party:

The Association has entered into an agreement, hereinafter referred to as "Association Agreement, dated as of April 30, 1934, with Huntington Shore Oil Company, hereinafter referred to as "Member", relative to the well of said Member designated as follows, to-wit: Huntington Shore Oil Company Well, hereinafter referred to as "Well".

Subject to the terms, conditions and limitations hereinafter set forth, Permitters hereby give the Association, and the Association may in turn give said Member, a sub-surface crossing permit for, and the right to use, maintain, repair and operate, said Well in its existing location and course under, through and across lands of the Permitters within the strip of land described as follows:

In the City of Huntington Beach, California, extending from the oceanward projection of the westerly side of 13th Street to the oceanward projection of the easterly side of 23rd Street between the landward side of Ocean Avenue and the high tide line.

Any such permit given by the Association to said Member shall be subject in each and every particular to the terms, conditions and stipulations of this

permit; and any revocation or cancelling of this permit shall automatically revoke or cancel any such permit given by the Association to said Member.

The Association has furnished the Permitters with a statement specifying the above described Well and giving a particular description of the land upon which the derrick of said Well is located; the Association has also furnished Permitters with plats and surveys of said Well showing the existing location and course of said Well, and a statement of the casing maintained in said Well giving the diameter and length of each string of casing and the depth at which each string is landed. The Association hereby represents that to the best of its knowledge and belief said statements and plats are accurate.

This permit is given at the request of the Association and in reliance upon and in consideration of representations by the Association and is also given at the request of the Director of Finance and Chief of the Division of State Lands of the Department of Finance of the State of California, in order that said Member may obtain and produce, through his or its Well, oil, gas and other hydrocarbon substances from the tide and submerged lands of the Pacific Ocean under compromise agreement between the State of California, through its said Director of Finance and Chief of the Division of State Lands, and the said Member, dated March 1st, 1934,

and this permit, subject to the limitations, representations and conditions hereinafter set forth, is given for the duration of and shall run concurrently with said compromise agreement, and each and every extension or renewal thereof. COPY OF SAID COMPROMISE AGREEMENT IS HERETO ATTACHED.

This permit is given in consideration also of the following representations made to the Permitters by the Association with reference to the said Well, all of which representations the Association is informed and believes are true and accurate, and all of which representations shall be deemed to have been made direct by the Member owning or operating said Well to the Permitters upon the acceptance by such Member of the permit from the Association above referred to:

1. That said Member is the owner or entitled to the possession of the land upon which the derrick of his or its said Well is located AND IS IN ALL RESPECTS ENTITLED AND QUALIFIED TO MAKE AND ENTER INTO THE STIPULATION HEREOF WITH REFERENCE THERETO AND TO SAID WELL; said land is hereinafter sometimes referred to as the "land of the Member".

2. That said Well originates on the land of the Member owning or operating said Well and is slanted or deflected therefrom through lands of Permitters within the strip hereinabove described

into the land under the Pacific Ocean, that said Well does not terminate otherwise than or take a course substantially different from that shown on the plats and surveys of said Well furnished by the Association to Permitters hereunder, and that no portion of the perforated pipe in said Well lies within the confines of any lands of Permitters.

3. That said Well is completed and producing, or is capable of being produced FROM LAND UNDER THE PACIFIC OCEAN, and that in the drilling and construction of said Well the Member owning or operating it has used and installed therein materials and equipment of good quality and condition.

4. That the casing maintained in said Well is of the diameters and lengths and is landed at the depths specified in the statement furnished by the Association to the Permitters; that all of said casing was at the time of installation new or in good condition and was installed in a proper and workmanlike manner; that all water sands have been effectively and in a proper manner plugged off; that any and all information and survey data now or hereafter in possession of, or available to, said Member relative to the history, location, course, mechanical condition, equipment, pressures, water shut-offs, oil production, perforations and condition of said Well, and any such information now or hereafter in possession of or available to the Association is now and will be available to Permitters.

5. That said Well throughout its course is in a safe condition and does not in any wise interfere with or endanger existing wells or any other property of the Permittors. That the existence, underground location and course of said Well have been ascertained by directional survey thereof and the results of such survey have been furnished to Permittors.

This permit is given subject to the following terms and conditions, all of which are binding on the Association and such Member with reference to the said Well upon the acceptance by the Member owning or operating said Well of the permit from the Association above referred to:

(a) Said Well shall at all times be maintained and operated in a good and workmanlike manner and so as to prevent and avoid danger of injury or damage therefrom to the property of Permittors. Permittors shall at all reasonable times have right of access to said Well and to all records and survey data pertaining thereto as to the history, location, course, mechanical condition, equipment, pressures, water shut-offs, oil production, perforations and condition of said Well.

The Association and said Member, with reference to the said Well, shall at all times promptly and effectively take precautionary or other measures to protect the Permittors and their property from injury or damage from said Well, and will promptly comply with the request of the Permittors to take such precautionary or other measures.

No work shall be done on said Well without written notice by the Association, or the Member owning or operating such Well, and the proper officer of the State of California to Permittors, showing the nature of the work proposed to be done and written permission from Permittors to proceed therewith; such permission will be given only when so requested by the State of California and the proposed work, in the opinion of Permittors, will not injure, damage or jeopardize the property of Permittors or any existing or contemplated well of Permittors; provided that no notice to, or consent by, the Permittors shall be required in event said Member desires to, or does, bail or clean out said Well, change the position of, pull, or fish for, tubing in said Well, clean out or wash perforations of same, fish for foreign objects in same, place packer on said tubing, replace or change position of tubing-catcher in same, or place, pull or replace pumps, or fish for or replace sucker rods in said Well.

If for any reasons operations of said Well are voluntarily suspended for six (6) months, Permittors shall have the right to terminate this permit.

(b) Permittors shall not be liable for any injury, damage or loss to the Association or said Member, or to any well drilled, operated or maintained by any Member, or to any property of the Association or said Member, resulting from activities of Permittors on or in any property of Per-

mitters in the Huntington Beach Oil Field through which said Well may pass.

(c) The Association and said Member, with reference to the said Well owned or operated by such Member, (1) shall protect and hold Permitters harmless from any and all claims for loss, damage or injury to others, including costs and reasonable attorneys' fees in the event suit is brought, and shall pay any loss, damage or expense which Permitters may suffer or incur, arising out of or in any way connected with the existence and/or operation of said Well and from any operation or activity of the Association and such Member on, in or in connection with said Well and from or on account of any contact, collision or other interference of said Well with any other well, whether of Permitters, of any other Member or of others, on, in or which crosses the property of Permitters; (2) shall assume all risk and shall be accountable for anything occurring on account of or due to the existence or operation of said Well and shall protect, indemnify and hold the Permitters harmless **THEREFROM AND** against any and all injury, damage or loss arising out of or due to the enjoyment of this permit; (3) shall protect, indemnify and hold harmless Permitters and the land of Permitters from any and all mechanics' and/or other liens and any and all cost or expense incurred on account thereof arising out of, **ASSERTED**, or in any manner due to anything done or caused to be done on or in connection with said Well.

(d) If, as and when said Well is abandoned, the Association and the Member owning or operating such Well shall promptly abandon the same in accordance with the regulations of the State of California Department of Natural Resources, Division of Oil and Gas, and, in addition thereto, shall promptly and effectively plug with cement, in a good and workmanlike manner, such portion or portions of the same and take such precautionary and protective measures with reference thereto, as may, in the determination of Permittors, be necessary or proper to prevent any injury or damage to or interference with the property or wells of Permittors.

(e) The Association and said Member shall, on request of Permittors, submit all data, surveys and information respecting said Well relating to its history, location, course, mechanical condition, equipment, pressures, water shut-offs, oil production, perforations and condition, and all data and information as to any and all negotiations and/or arrangements for surveying said Well and all surveys thereof, whether "single shot" or otherwise, and whenever such surveys have been made, whether before or after the date hereof. If any data, survey or information furnished Permittors hereunder is incorrect or for any reason, in the judgment of Permittors, insufficient, the Association and the **Member owning or operating such Well**, will, on being notified of that fact, promptly furnish the required information, including survey thereof, if

required by Permittors, and if the Association or such Member fails to furnish the data, survey and information so required, Permittors, or the nominee of Permittors, shall have the right, as the agent of such Member and at such Member's and/or the Association's risk and expense, to enter upon such Member's lands and make such examination as may be necessary to obtain the desired information, including survey of said Well. In the event Permittors, or the nominee of Permittors, should be denied access to said Well for the purpose of making such examination or survey, Permittors shall have the right to terminate this permit.

(f) In the event it should be determined at any time hereafter by Permittors that any portion of the perforated pipe in said Well lies within the confines of any lands of Permittors, Permittors shall have, in addition to any other remedy, whether at law or in equity, against the owner or operator of such Well, the right to terminate this permit.

(g) Should said Well be so close to any well PROPOSED TO BE drilled by Permittors on any land owned or leased by Permittors as, in the JUDGMENT of Permittors, to injure, damage, interfere or conflict with OR JEOPARDIZE the same, Permittors shall have the right at any time after commencement of drilling operations of such well to terminate this permit whereupon the Member and/or the Association shall PROMPTLY abandon and plug said Well, as provided in condition (d) hereof.

(h) Said Member, with reference to said Well, shall comply with all laws of the State of California and all rules and regulations of any agency of the State of California having jurisdiction therein, and all laws of the United States of America, and all rules and regulations of any agency of the United States of America having jurisdiction therein, relating to the drilling, maintenance and operation of oil and gas wells and production of oil and gas.

Said Member, with reference to said Well, shall comply with any reasonable conservation or curtailment program or programs which may at any time and from time to time affect the production of oil and/or gas from the said Well, and which program or programs are mutually agreed upon by a majority of the operators in the field in which such Wells are situated.

(i) This permit is personal to the Association and to such Member with reference to the said Well, and shall not be assigned, in whole or in part, without the written consent of Permittors. In the event this permit is assigned as to said Well, whether voluntarily or by operation of law, or in the event such Well is operated or controlled by one who is not a Member of the Association, Permittors shall have the right to terminate this permit as to such Well; provided, however, that in the event the land on which the derrick of said Well is located, together with the Well and its equipment is repossessed by the lessor of said Member, such repossession shall not be construed as an assignment,

and in such event Permittors shall not terminate this permit, provided such lessor becomes, immediately after such repossession, a member of the Association AND MAKES GOOD ANY FAILURE OF THE PERMITTEE TO FULLY PERFORM ANY UNFULFILLED PROVISION HEREOF. Subject to all the terms and conditions hereof, this permit shall be binding upon the successors and assigns of the parties hereto.

(j) Any and all cost or expense incurred by Permittors in enforcing or effectuating this agreement will be repaid to Permittors on demand by the Association and the Member owning or operating said Well.

(k) Should any of the foregoing representations fail with reference to said well, or should the Association or said Member be in default in the strict and faithful observance of any of the foregoing conditions with reference to said Well, or should such Member cease to be a member of the Association, or should such Member fail faithfully to comply with his or its obligations under said Association Agreement, or fail to comply with any of the terms or conditions of any permit, which, by virtue of this agreement, the Association may give to such member, Permittors shall have the right immediately to terminate this permit as to the said well.

(1) Upon the termination of this permit, whether by expiration of its term, or otherwise, the Association and said Member, with reference to the

said Well, shall abandon and plug, in the manner provided for in condition (d) hereof, the said Well, but if the Association or such Member should fail to commence the work of abandoning within ten (10) days after such termination, and thereafter fail to diligently prosecute the same to completion, Permitters, or the nominee of Permitters, shall have the right to enter the lands of such Member as the agent of such Member and to abandon and plug said Well in such manner as Permitters shall deem proper for the protection of the property or wells of Permitters, at the risk of the Association and such Member, and all cost and expense of such abandonment and plugging, together with interest thereon at the rate of seven per cent (7%) per annum, shall be paid by the Association for such Member or by such Member, upon demand; and in case of suit to enforce or collect the same, the Association, for such Member, and such Member agree to pay Permitters in addition a reasonable attorney's fee to be fixed and allowed by the court.

The Association severally agrees with the Permitters:

A. Not to give any permit hereunder except to said Member. Notwithstanding any provision in the permit from the Association to said Member, the obligations of the Association and said Member hereunder shall remain joint and several;

B. To notify the Permitters of the breach by said Member of his or its obligations under the Association Agreement.

C. To immediately create and maintain with a depository approved by Permittors an Indemnity Fund of not less than \$100,000 for the discharge of the obligations of the Association and its Members to the Permittors hereunder, and under any similar permit, and said fund shall not be drawn upon for any other purpose. Should any portion of said Fund of \$100,000 be used for such purpose, the Association will, whenever and as often as said Fund is so used, by assessment among its Members, in the manner now provided in the existing agreement between the Association and its members dated as of April 30, 1934, promptly raise said Fund to the sum of \$100,000. The Association shall not draw on said fund without the written approval of Permittors to the depository, and the Association will maintain with such depository notice and direction to that effect, acknowledgment of which shall be sent to Permittors by Depository.

In the event the Association should be dissolved or in the event the Association should not strictly and faithfully comply with each and all the provisions hereof, the Permittors shall have the right immediately to terminate this permit, whereupon said Well shall be abandoned subject to and in accordance with the provisions of this agreement.

The word "Permittors" whenever used in this permit shall be deemed to include and refer to the first parties herein, or any of them.

Permittors hereby designate Standard Oil Company of California, whose address is 225 Bush

Street, San Francisco, California, as their representative in all matters relating to this agreement.

Any notice, information or data to be given Permittors hereunder shall be valid if mailed by registered mail, postage prepaid, to Standard Oil Company of California at the above address; any notice or other communication to be given the Association or said Member shall be valid if mailed by registered mail, postage prepaid, to the Association at Huntington Beach, California.

If there is any conflict between the Association Agreement and this agreement with respect to the obligations of the Association and said Member hereunder, the provisions of this agreement shall prevail.

In witness whereof, the parties hereto have executed these presents as of the 5th day of July, 1935.

STANDARD OIL COMPANY
OF CALIFORNIA

[Seal] By B. W. LETCHER

Asst. Sec'y
HUNTINGTON BEACH
COMPANY

[Seal] By G. M. FOSTER

Ass't Secty
PACIFIC ELECTRIC RAIL-
WAY COMPANY

[Seal] By D. W. PONTIUS

Pres.

PACIFIC ELECTRIC LAND
COMPANY

[Seal] By D. W. PONTIUS
Pres.

Permitters.

HUNTINGTON BEACH
TOWNSITE ASSOCIATION

[Seal] By EUGENE MELTON
Pres.

H. S. HANCOCK

Asst Secy.

Association.

Dated May 11, 1937.

[Endorsed]: Tr. Exhibit No. 4. Filed April 26, 1940. Ernest R. Utley, Referee.

[Endorsed]: Filed March 28, 1941. R. S. Zimmerman, Clerk.

Mr. Dechter: That is all for the petitioner, for the Trustee.

Mr. Borden: I think I made the statement in the first instance that our cross examination was not to be construed as any waiver of our objection to the jurisdiction.

The Referee: Oh yes.

Mr. Borden: I don't think there is any question about that. We have no evidence to offer at the present time. I might have if there is any question in your Honor's mind whether or not the Court,

in a summary proceeding of this kind against a total stranger, and under these circumstances, has a right to take any action or to restrain us from proceeding. I should like to have a continuance in order to put on some testimony without conceding the jurisdiction of the Court. I think the Court is entitled to have the benefit, no matter what order it makes with respect to directing the Trustee to commence plenary action or any other remedy available to him, of hearing testimony on both sides.

Mr. Dechter: We have no objection to giving Mr. Borden [188] a reasonable length of time.

The Referee: From what I know about this case here is the way I feel now: I don't think the bankruptcy court has any jurisdiction to tell a stranger where or how he should drill his well so long as that stranger does not interfere or trespass upon the rights of the bankrupt. Up to that point this Court has not anything to say. If there is a danger of trespassing or damaging the bankrupt's property, I think then the Court would have jurisdiction, that is, covering that particular phase of it. That is my offhand impression.

Mr. Borden: Well, I think there is no doubt if we were actually trespassing upon the property of the bankrupt, there is no doubt in my mind but what the Court would have ample opportunity to restrain us, but here we are drilling in separate lots where there is no interference at all. We are doing the same thing they have done since the matter has been in bankruptcy, your Honor. They

have drilled within one hundred feet of us, according to the testimony before the Court, but now they seek to enjoin us from proceeding to do the very same thing, to re-drill and place our well on production.

The Referee: I can say right now this Court will not attempt to prevent you from re-drilling, but there is a certain course which this Court may prevent you from taking.

Mr. Palette: I think we can stipulate to an order, if [189] you want to make one, restraining us from coming within a certain distance.

Mr. Dechter: That is agreeable.

The Referee: What would be a reasonable distance, the regulation of the Department?

Mr. Dechter: I am willing to make it within the radius of one hundred feet, or the diameter of two hundred feet. In other words, if counsel will agree—

The Referee: Why not follow the regulation—

Mr. Dechter: That is agreeable.

The Referee: —as Exhibit 1 provides?

Mr. Dechter: I might also call the Court's attention to the Huntington Townsite agreement which is binding on the Bolsa Chica Corporation, which contains this provision:

“Said member, with reference to said well, shall comply with all of the laws of the State of California and all rules and regulations of any agency of the State of California having jurisdiction thereof.”

Now, other members of this association have agreed to comply with those rules and this agency has jurisdiction.

Mr. Borden: That is not before this Court. It is a matter of whether or not we were interfering with the bankrupt's property.

Mr. Rifkind: I understand it is agreeable that an injunction be granted embodying the regulations—

Mr. Palette: No. [190]

Mr. Rifkind: What is that?

Mr. Palette: No.

Mr. Rifkind: What do you suggest?

Mr. Palette: I suggested we would be willing to stipulate that an injunction be granted restraining us from coming within a reasonable distance of the well.

Mr. Dechter: All right.

Mr. Palette: I think we will have to consult with our engineers as to what they deem to be a reasonable distance.

Mr. Dechter: If you make it one hundred feet it will end the matter.

The Referee: Is it one hundred or two hundred?

Mr. Dechter: Within a radius of one hundred feet or a diameter of two hundred feet.

Mr. Borden: No one ever contended we would get any closer than that.

The Referee: Suppose, gentlemen, I continue this matter and then you can see if you can get together on an order?

Mr. Palette: I wouldn't be surprised but what we could stipulate on one hundred feet, but I don't think I am justified in doing so without consulting our engineers.

Mr. Borden: I think that is a good idea. Let the record show, if your Honor please, that by suggesting that we are willing to submit to the jurisdiction of the Court, that we do not do so until we actually do so.

The Referee: Yes, I understand that. Suppose I continue [191] this matter for a week or ten days?

Mr. Palette: Could it be continued for a shorter time than that. We have a hearing set before the State Lands Commission some time during the middle of next week at which time we hope to get the consent of the State to proceed.

The Referee: You are not going to proceed until you do that?

Mr. Palette: We are closed down. We have been closed down for about a week, and we have no intention of proceeding now. We hope to work out an agreement with the Chairman of the State Lands Commission some time during the week. I suggest a continuance be granted until Tuesday or Wednesday.

The Referee: Of this next week?

Mr. Palette: Yes.

Mr. Dechter: Of the coming week, or the week following?

Mr. Palette: Next Tuesday or next Wednesday.

Mr. Borden: I don't think it would take any time at all.

Mr. Dechter: I suggest we make it Wednesday, your Honor.

The Referee: Well, due to the condition of my calendar I will continue it until May 1st, in the afternoon, 2:00 P. M.

Mr. Rifkin: Do I understand that until that time there will be no resumption of drilling?

Mr. Palette: That is correct, we will consent to not re-drill before next Wednesday, that is, to make any holes.

The Referee: Very well.

(Whereupon an adjournment was taken to the hour of 2:00 P. M., May 1st, 1940.) [192]

Los Angeles, California.

Wednesday, May 1, 1940.

2:00 o'Clock, P. M. Session.

* * * * *

The Referee: Have you accomplished anything in the matter of Jack Dave Sterling?

Mr. Rifkin: Yes, your Honor. We have reached a stipulation that an injunction may be issued by the Court against the Bolsa Chica Oil Corporation. We have already given the specific language to the reporter and I would like him at this time to read it to the Court.

The Referee: Is the stipulation generally agreed to between counsel?

Mr. Borden: Yes.

The Referee: You may state generally what it is.

Mr. Borden: We have stipulated as to the order. We do not concede jurisdiction of the Court. We are going to agree that we will not review the order of Court and will be bound by the order. However, I make that statement because we do not want to generally concede jurisdiction.

The Referee: You may review any order this Court makes I would welcome a review—but if I were going to be reviewed on a question of jurisdiction I would want to give serious consideration to the question.

Mr. Borden: I will say you will not be required to do so; but we do not want to submit to any proceedings in a [193] court where we are strangers.

Mr. Rifkind: I would like to have the reporter read aloud our stipulation.

The Referee: Very well.

Mr. Borden: I agree with you, but I wanted our position made perfectly clear.

(Whereupon the stipulation referred to was read by the reporter, as follows:)

“Bolsa Chica Oil Corporation, its superintendent, agents and employees, shall be restrained and enjoined from drilling, re-drilling or sidetracking its Petroleum Well, also known as Fee No. 1 Well at Huntington Beach, California, so that it comes closer than 200 feet from the Huntington Shore Well measured on a horizontal plane at any point below the depth of 3800 feet below sea level as the course of the Huntington Shore Well is shown on the plat or chart marked Trustee’s Exhibit 5.

“In determining whether such drilled, re-drilled or sidetracked portion of Petroleum Well, also known as Fee No. 1 Well approaches within 200 feet of the Huntington Shore Well, measured as above set forth, the course of the Huntington Shore Well in said plat shall be as delineated on said plat and shall be conclusive as to the parties; and the distance therefrom shall be conclusively determined by plotting the course of the drilled, re-drilled or sidetracked portion of said [194] Fee No. 1 Well on said plat, based upon single shot surveys taken during the course of the drilling, re-drilling or sidetracking of the Petroleum Well, also known as Fee No. 1 Well, at approximately every 100 feet, which single shot surveys shall be made available to the Trustee in Bankruptcy or his representatives as the same are from time to time taken and made;

“That the circulating fluid in drilling, re-drilling, or sidetracking of said Petroleum Well, also known as Fee No. 1 Well, shall be virgin crude oil maintained at a grade and gravity consistent with good oil practice in said field, and that no mud or other foreign substances of any kind shall be used in lieu or such circulating fluid, provided that a substitute circulating fluid may be used as may be mutually agreed to in writing between the petroleum engineers for the respective parties thereto.”

Mr. Rifkind: Now, I think there should be no cementing in the well unless agreed to between the engineers of the parties. I understand you do not contemplate any cementing and there shall be none unless that becomes a matter of discussion?

Mr. Templeton: Or unless required by law or some legally constituted authority.

Mr. Rifkind: If you engineers can agree that it is good practice, all right. [195]

Mr. Anderson: On the other hand, suppose they can't agree?

Mr. Rifkind: We will have to worry about that later; but your superintendent here now says you do not contemplate using any cement.

Mr. Anderson: But you never know what will develop.

Mr. Templeton: Should we develop a hole in the casing above our present cement shut-off it may become necessary to place a cement job in that portion of the hole, which should not in any way jeopardize the Huntington Shore Well.

Mr. Rifkind: Well, that would develop a new consideration. Right now it is not present, and when it develops it should be made a subject of inquiry.

The Referee: Why not put it in this form, if you are going to put it in at all:

That application, if it could not be agreed upon, could be made to the Court in the way of a petition.

Mr. King: I believe the Division of Oil and Gas could take care of that.

Mr. Rifkind: If the petroleum engineers for the parties cannot agree to the use of concrete, in the event both engineers deem it necessary, the matter may be submitted to the Court, if necessary.

Mr. Palette: What about the Division of Oil and Gas clamping down on us?

Mr. Rifkind: If they clamp down on you then there is no [196] necessity for a hearing, but on the other hand we may want to inquire into it.

Mr. Anderson: I think Mr. King will advise you there will be no need for cement in the productive interval. We do not contemplate going through the productive zone. There is no water below that horizon.

Mr. Rifkind: Is there any reason why you could not submit that to our petroleum engineer, and he may not raise the question; but on the other hand, if he does raise the question, you will have to get the permission of the Division of Oil and Gas.

Mr. Palette: Make that in the alternative.

Mr. Rifkind: Before you do any cementing that you submit it to our petroleum engineer for consideration, and if there is any question, that we come back here and submit the proposition to the Court.

Mr. Palette: Or to the Division of Oil and Gas.

Mr. Rifkind: All right.

The Referee: Is that stipulation agreeable, gentlemen?

Mr. Borden: Yes.

Mr. Rifkind: We will prepare an order.

The Referee: Very well, prepare a formal order.

Mr. Rifkind: It will be approved as to form and contents by both sides.

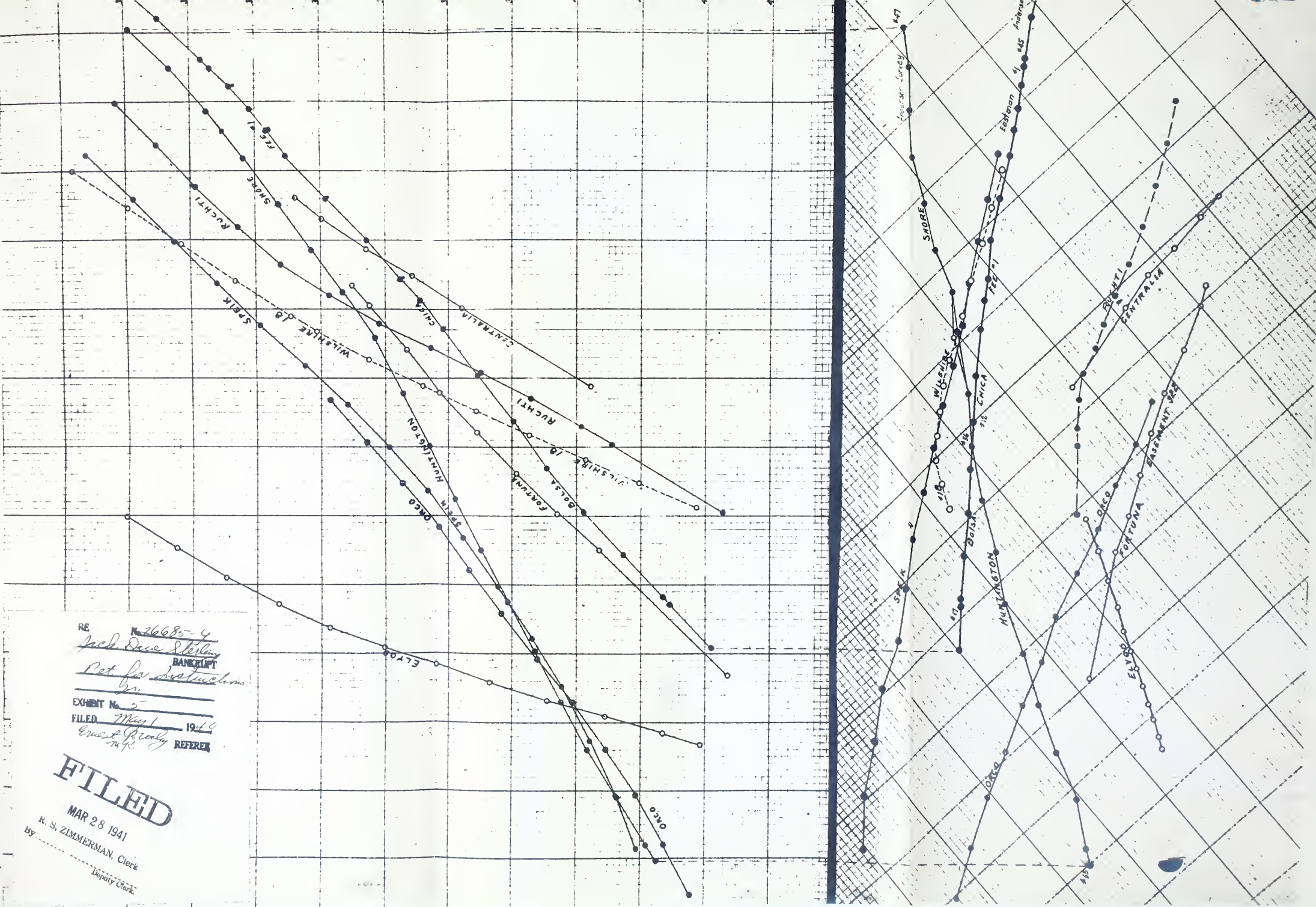
Now, I want to introduce as Trustee's exhibit next in order this plat showing among other things the course of the [197] Huntington Shore Well and the course of the old Bolsa Chica Well.

Mr. Palette: The present course.

Mr. Rifkind: The present course of the Bolsa Chica Well, known as Petroleum Well, and also known as Fee No. 1 Well.

The Referee: The plat will be marked Trustee's Exhibit No. 5.

(The document referred to is marked Trustee's Exhibit No. 5, in evidence.)



RE N 26685-4
Jack Dave Sterling
 BANKRUPT
Pet. for instructions
 by
 EXHIBIT No. 5
 FILED May 1 1941
Ernest P. Brady REFEREE
 m.p.

FILED

MAR 28 1941

R. S. ZIMMERMAN, Clerk
 by
 Deputy Clerk

[Endorsed]: Filed Sept. 30, 1940. Ernest R. Utley, Referee.

[Endorsed]: Filed Dec. 31, 1940. R. S. Zimmerman, Clerk. [198]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS IN RE: TRUSTEE VS. BOLSA CHICA OIL CORPORATION.

Los Angeles, California.

Thursday, September 26, 1940; Monday, September 30, 1940; Tuesday, October 1, 1940.

Appearances:

Elizabeth R. Hensel and William H. Cree, Esq., appearing specially for M. M. McCallen Corporation, McVicar and Rood, H. H. McVicar, C. M. Rood and W. H. Cree.

Overton, Lyman and Plumb, by Eugene Overton, Esq. and Warren S. Palette, Esq., for Bolsa Chica Oil Corporation.

Joseph J. Rifkind, Esq. and Raphael Dechter, Esq., for Hubert F. Laugharn, Esq., Trustee.

W. H. Abrams, Esq., for Division of Oil and Gas.

[199]

Los Angeles, California.

Thursday, September 26, 1940.

10:00 O'clock, A. M. Session.

The Referee: Jack Dave Sterling.

Mr. Rifkind: Ready.

The Referee: You may proceed in this matter.

Mr. Cree: My name is William H. Cree, Attorney at Law, 1216 Security Building, Long Beach. I am appearing here specially for M. M. McCallen Corporation, McVicar and Rood, H. H. McVicar, C. M. Rood, and myself, to object to the jurisdiction of the Court to hear and dispose of this matter, and at this time I was asked to associate Mrs. Hensel, one of your local bar, as counsel for myself and the other defendants I just named.

The Referee: May we have the other representations?

Mr. Overton: Overton, Lyman and Plumb are appearing for Bolsa Chica Oil Corporation and appearing specially, represented by Mr. Palette and Mr. Overton. I am Mr. Overton and this is Mr. Palette. [200]

The Referee: As I recall, when this injunction was issued counsel appearing at that time for the respondents objected to the jurisdiction of the Court. I think the Court stated at that time and I think the record will so show the Court stated it doubted its jurisdiction to prevent the drilling of the well so long as it did not interfere with [208] the bankrupt's property, that it was only in connection with any interference of the bankrupt's

property that the Court might have jurisdiction of the matter. After the objection to the jurisdiction was overruled counsel who then appeared, together with Mr. Rifkind, got together and worked out the details of the restraining order.

Mr. Rifkind: That is correct.

Mr. Dechter: I might state, your Honor, counsel in open court said they would consent to an injunction being granted along the lines stated in the order.

The Referee: Yes, that is correct.

Mr. Dechter: In other words, there was a continuance had for the purpose of having Mr. Borden discuss the matter with the engineer of the Bolsa Chica Oil Corporation to work out how many feet the Bolsa Chica Well should stay away from the Huntington Shore Well. That was the only question, if we could get together on the number of feet they would consent to the order, and mud not being used. Then they got together with the engineer—

Miss Hensel: The order itself by its terms specifically reserves the right to objecting counsel, or reserves to them the right to object to the jurisdiction.

Mr. Dechter: I don't agree with counsel.

Miss Hensel: After that later in the order the Court does overrule the objection.

Mr. Dechter: In the order itself, in addition to what [209] took place in court it states they consented to the jurisdiction of this Court to make the order in question.

Miss Hensel: Yes, but I submit——

Mr. Dechter: But reserved the right to object to the general jurisdiction of the Court as to other matters.

Mr. Rifkind: To keep the matter straight I will read from page 83 of the transcript.

Miss Hansel: I would rather straighten out the matter of the order first, and not from the transcript.

Mr. Rifkind: I will read from the transcript, page 83, line 2:

“The Referee: From what I know about this case here is the way I feel now: I don't think the bankruptcy court has any jurisdiction to tell a stranger where or how he should drill his well so long as that stranger does not interfere or trespass upon the rights of the bankrupt. Up to that point this Court has not anything to say. If there is a danger of trespassing or damaging the bankrupt's property, I think then the Court would have jurisdiction, that is, covering that particular phase of it. That is my offhand impression.

Mr. Borden: Well, I think there is no doubt if we were actually trespassing upon the property of the bankrupt, there is no doubt in my mind but what the Court would have ample opportunity to restrain us, but here we are drilling in separate lots where there is no [210] interference at all. We are doing the same thing they have done since the matter has been

in bankruptcy, your Honor. They have drilled within one hundred feet of us, according to the testimony before the Court, but now they seek to enjoin us from proceeding to do the very same thing, to re-drill and place our well on production.

The Referee: I can say right now this court will not attempt to prevent you from re-drilling, but there is a certain course which this Court may prevent you from taking.

Mr. Palette: I think we can stipulate to an order, if you want to make one, restraining us from coming within a certain distance."

Then I will skip on to page 85:

"Mr. Palette: I suggested we would be willing to stipulate that an injunction be granted restraining us from coming within a reasonable distance of the well.

Mr. Dechter: All right.

Mr. Palette: I think we will have to consult with our engineers as to what they deem to be a reasonable distance.

Mr. Dechter: If you make it one hundred feet it will end the matter.

The Referee: Is it one hundred or two hundred?

Mr. Dechter: Within a radius of one hundred feet [211] or a diameter of two hundred feet.

Mr. Borden: No one ever contended we would get any closer than that.

The Referee: Suppose, gentlemen, I continue this matter and then you can see if you can get together on an order?

Mr. Palette: I wouldn't be surprised but what we could stipulate on one hundred feet, but I don't think I am justified in doing so without consulting our engineers.

Mr. Borden: I think that is a good idea. Let the record show, if your Honor please, that by suggesting that we are willing to submit to the jurisdiction of the Court, that we do not do so until we actually do so."

And then the Referee on page 86:

"The Referee: Well, due to the condition of my calendar I will continue it until May 1st, in the afternoon, 2:00 P. M.

Mr. Rifkind: Do I understand that until that time there will be no resumption of drilling?

Mr. Palette: That is correct, we will consent to not re-drill before next Wednesday, that is, to make any hole.

The Referee: Very well."

Whereupon an adjournment was taken to the hour of 2:00 P. M. May 1st, 1940. [212]

Now, skipping to page 87 of the transcript at the session of Wednesday, May 1st, 1940 at 2:00 o'clock, P. M.:

"The Referee: Have you accomplished anything in the matter of Jack Dave Sterling?

Mr. Rifkind: Yes, your Honor. We have reached a stipulation that an injunction may be issued by the Court against the Bolsa Chica Oil Corporation. We have already given the specific language to the reporter and I would like him at this time to read it to the Court.

The Referee: Is the stipulation generally agreed to between counsel?

Mr. Borden: Yes.

The Referee: You may state generally what it is.

Mr. Borden: We have stipulated as to the order. We do not concede jurisdiction of the Court. We are going to agree that we will not review the order of Court and will be bound by the order. However, I make that statement because we do not want to generally concede jurisdiction.

The Referee: You may review any order this Court makes—I would welcome a review—but if I were going to be reviewed on a question of jurisdiction I would want to give serious consideration to the question.

Mr. Borden: I will say you will not be required to do so; but we do not want to submit to any proceedings in [213] a court where we are strangers.

Mr. Rifkind: I would like to have the reporter read aloud our stipulation.

The Referee: Very well.

Mr. Borden: I agree with you, but I wanted our position made perfectly clear.

(Whereupon the stipulation referred to was read by the reporter, as follows:)

‘Bolsa Chica Oil Corporation, its superintendent, agents and employees, shall be restrained and enjoined from drilling, re-drilling or sidetracking its Petroleum Well, also known as Fee No. 1 Well at Huntington Beach, California, so that it comes closer than 200 feet from the Huntington Shore Well measured on a horizontal plane at any point below the depth of 3800 feet below sea level as the course of the Huntington Shore Well is shown on the plat or chart marked Trustee’s Exhibit 5.

‘In determining whether such drilled, re-drilled or sidetracked portion of Petroleum Well, also known as Fee No. 1 Well approaches within 200 feet of the Huntington Shore Well, measured as above set forth, the course of the Huntington Shore Well in said plat shall be as delineated on said plat and shall be conclusive as to the parties; and the distance therefrom shall be conclusively determined by plotting [214] the course of the drilled, re-drilled or sidetracked portion of said Fee No. 1 Well on said plat, based upon single shot surveys taken during the course of the drilling, re-drilling or sidetracking of the Petroleum Well, also known as Fee No. 1 well, at approximately every 100 feet, which single shot surveys shall be made available

to the Trustee in Bankruptcy or his representatives as the same are from time to time taken and made;

‘That the circulating fluid in drilling, re-drilling, or sidetracking of said Petroleum Well, also known as Fee No. 1 Well, shall be virgin crude oil maintained at a grade and gravity consistent with good oil practice in said field, and that no mud or other foreign substances of any kind shall be used in lieu of such circulating fluid, provided that a substitute circulating fluid may be used as may be mutually agreed to in writing between the petroleum engineers for the respective parties thereto.’ ”

Now, that covers that point.

Now, in connection with that I would like to point out to the Court, and I think in this matter the Court will have to take judicial knowledge that an order was prepared by counsel for the Trustee, that is an injunction and that objections were interposed thereto by counsel for the Bolsa Chica Oil Corporation, and your Honor permitted a conference [215] in chambers at which Mr. Borden, attorney for the Bolsa Chica Oil Corporation, and others, were present, and I was present on behalf of the Trustee, at which time certain revisions were made in the order, that is the injunction as originally presented, and they were incorporated in the final order.

Going back to the transcript, page 91, by the way, and referring to the stipulation which I have just read, line 19, page 91:

“The Referee: Is that stipulation agreeable, gentlemen?”

Mr. Borden: Yes.

Mr. Rifkind: We will prepare an order.

The Referee: Very well, prepare a formal order.

Mr. Rifkind: It will be approved as to form and contents by both sides.”

Now, in conformity with that we prepared an order and the order was revised and as revised the injunction as revised and signed by your Honor bears this notation on the last page:

“Approved as to form and contents: Joseph J. Rifkind and Raphael Dechter by Joseph J. Rifkind, attorneys for Trustee in Bankruptcy. Overton, Lyman and Plumb, by Cecil A. Borden, attorneys for Bolsa Chica Oil Corporation, a corporation.”

Now, in connection with that I think the Court should [216] have in mind the preamble of the injunction:

“The verified petition of Hubert F. Laugharn, as Trustee in Bankruptcy in the above entitled matter, and the order to show cause issued thereon directed to the Bolsa Chica Oil Corporation, a corporation, came on regularly for hearing before Hon. Ernest R. Utley, Ref-

eree in Bankruptcy, on April 26, 1940, at two o'clock P. M. and after being partially heard on said date, was continued for further hearing to and the hearing thereof was concluded on May 1, 1940, at two o'clock P. M. The Trustee in Bankruptcy appeared through and was represented by Joseph J. Rifkind and Raphael Dechter, his attorneys, and the Bolsa Chica Oil Corporation, a corporation, appeared through and was represented by Cecil A. Borden and Warren S. Palette, of Overton, Lyman & Plumb, its attorneys. The Bolsa Chica Oil Corporation, upon the calling of the matter, announced that it was appearing specially for the sole purpose of objecting to the jurisdiction of the court to make any order affecting said corporation; that thereupon the court informed counsel that it would withhold ruling upon the question of jurisdiction until sufficient evidence was introduced to determine the question; that oral and documentary evidence was introduced upon the part of the Trustee in Bankruptcy and the witnesses called on behalf of the Trustee in Bankruptcy were [217] cross-examined by the attorneys for the Bolsa Chica Oil Corporation; the Bolsa Chica Oil Corporation, having at the conclusion of the introduction of oral and documentary evidence upon behalf of the Trustee in Bankruptcy, stipulated in open court to the granting of the injunction as hereinafter more particularly set forth, the Bolsa

Chica Oil Corporation stating that such stipulation was subject to the objection to the jurisdiction of the court and that such stipulation was not intended to confer general jurisdiction on the court; the court having been fully advised in the premises and the court having overruled the objection of Bolsa Chica Oil Corporation to the jurisdiction of the court,

It Is, Therefore, Ordered as Follows:”

Then I will skip portions of the injunction which I do not deem pertinent at this moment, and turning to page 2 which incorporates that stipulation made in open court and that particular portion of it, to-wit:

“That the circulating fluid used in drilling, re-drilling or sidetracking of said ‘Petroleum Well’, also known as ‘Fee No. 1 Well’, shall be virgin crude oil maintained at a grade and gravity consistent with good oil practice in said field, and that no mud or other foreign substances of any kind shall be used in lieu or as part of such circulating fluid, provided [218] that a substitute circulating fluid may be used as may be mutually agreed to in writing between the petroleum engineers for the respective parties thereto.”

Mr. Palette: I would like the record to show Mr. Overton and I are appearing for Bolsa Chica Oil Corporation, Mr. Simmons, Mr. Anderson and myself, and Mr. Cree and his associates are repre-

senting the other respondents. Mr. Overton stated we are appearing specially and I want to amplify that and state we are appearing specially to continue at this time our objection to the jurisdiction of the Court which was not waived at the former hearing.

Miss Hensel: On behalf of Mr. Cree and myself and the clients whom we represent we urge the matter of the jurisdiction of the Court most strenuously. There can be no question that our clients waived jurisdiction at the prior hearing. We are simply wanting to point out to the Court Bolsa Chica itself did not waive that objection at the prior hearing, and now under our claim of right to the property formerly owned and operated by Bolsa Chica under an adverse title we certainly are objecting to the jurisdiction and appear specially only for the purpose of determining whether the Court has jurisdiction or not.

The Referee: Any argument?

Mr. Dechter: I think it would be preferable to defer the argument until the close. We have quite a number of cases to cite to your Honor. Even in cases where the [219] injunction has not been consented to, where there might have been some attack made on the jurisdiction of the Court, that no appeal having been taken from the order even though the order was clearly erroneously made the parties are bound by the injunction and cannot violate the injunction willfully like it has in this case. If they feel the injunction is erroneous they should apply

to have it modified or vacated. It is our contention as far as McVicar and Rood are concerned, they are agents and accessories for the Bolsa Chica Oil Corporation in the attempt to circumvent this injunction; because the Bolsa Chica Oil Corporation felt it could not do it directly it did it indirectly. Even though they were agents and accessories they would be bound by it.

Miss Hensel: In the first place, counsel will have first to prove that McVicar and Rood and the other parties are accessories and agents of the Bolsa Chica Oil Corporation. In that case if they could so prove it is conceivable the Court might have jurisdiction to issue such an injunction as this against these clients, but until it is proven beyond any doubt our clients certainly cannot be subservient to such an injunction, so we will object to the introduction of any evidence on any ground except the single ground of showing the connection between our clients and the Bolsa Chica at this time.

Mr. Dechter: An injunction having been issued and being in full force and effect we have only to show the injunction [220] is being violated, and it behooves the respondents and all of them to condone their conduct and show it did not come within the purview of the language of the injunction. We do not have to connect them up. In other words, the authorities we have, not only State Court but United States Supreme Court and various Federal Court cases are conclusive that this injunction is in full force and effect not only on those named but those

aiding and abetting those named. The only way they can escape the full force and effect of it is to take a review or appeal or some other appropriate proceeding. They cannot as long as the injunction is in full force and effect ignore, violate or disobey it, and they cannot attack the jurisdiction of the Court, the merits of the matter or the propriety of the injunction in a contempt proceeding.

I think we should present evidence, your Honor, but if your Honor deems otherwise, we are prepared with proper authorities to maintain our position.

Mr. Palette: I think we are in position to show anyway that Bolsa Chica Oil Corporation has made a bona fide sale of the well and if that can be established, as I believe it can, it won't be necessary for you to rule on the stipulation as far as Bolsa Chica Oil Corporation is concerned.

Now, I suggest a stipulation with counsel reserving our objections to the jurisdiction and making an objection to the introduction of any evidence to be determined by the [221] ruling on the question of jurisdiction, and if we are not successful in satisfying you on our position in the matter that we reserve argument on the question of jurisdiction until after the introduction of such evidence.

Mr. Dechter: We do not care to make any such stipulation. We are contending the Bolsa Chica Oil Corporation is estopped from making any such objection. As far as the Court ruling on the objection to the jurisdiction, it is well established in

bankruptcy courts that the bankruptcy court has the right to hear enough evidence to determine whether the objection to the jurisdiction is bona fide or not. In other words, you cannot make it on the mere statement of counsel and not inquire into the matter to determine whether it has or has not jurisdiction. [222]

The Referee: Well, gentlemen. The Court will overrule the objection to the jurisdiction without prejudice to the right of the parties to renew their objection at the close of the evidence. [226]

EARL ROSS,

called as a witness on behalf of the Trustee, being first duly sworn, testified as follows:

The Referee: Give your full name to the reporter. A. Earl Ross.

The Referee: Where do you reside?

A. 121 Kansas Street, Arcadia.

Direct Examination

By Mr. Rifkind:

Q. What is your business or occupation

A. Superintendent of Production.

Q. Are you Superintendent of the Huntington Shore Well at Huntington Beach, California?

A. Yes sir.

Q. How long have you been Superintendent in charge of the Huntington Shore Well?

A. Two years and a half.

(Testimony of Earl Ross.)

Q. And are you familiar with the well known as the Petroleum Well and also known as Fee No. 1 Well at Huntington Beach, California?

A. Yes, sir.

Q. And is that well in the vicinity of the Huntington [227] Shore Well? A. Yes sir. [228]

Q. Do you know if any mud came into the Huntington Shore Well as the result of that re-drilling? A. Yes sir.

Q. Do you know how much mud did get into the Huntington Shore Well? A. 3700 feet. [232]

Q. A column of 3700 feet of mud?

A. Yes, 3700 feet of mud.

Q. And what was the effect of that column of 3700 feet of mud on the Huntington Shore Well?

A. It cut off all production and gas, shut the gas off at 7:30 in the morning and at 8:15 we were pumping mud.

The Referee: What date was that?

A. June 8.

Q. This year? A. Yes sir, 1940.

Mr. Rifkind: Q. How long were you shut down?

A. We pumped until 11:00 o'clock and started pulling the tubing and rods out and then we shut down for eleven days.

The Referee: You say 11:00 o'clock in the morning? A. Yes, 11:00 A. M.

Mr. Rifkind: Q. Now, Mr. Ross, how long have you been engaged in the oil business?

(Testimony of Earl Ross.)

A. Since 1915.

Q. 1915. Has your experience been confined to the oil fields of California? A. Yes sir.

Q. How long have you been acting in the capacity of Superintendent?

A. Over four years. [233]

Q. Will you state to the Court what effect or what consequences resulted from the use of mud as a drilling fluid and how it would and did affect the Huntington Shore Well and what the continued use of it might result in doing?

A. Well, it shuts the gas and oil off. We shut the well [236] down for eight days waiting for the casing to be cemented. We then went in to see if there was any mud in the hole and found there was and went on to bale and wash it out, and it went on production on the 26th of June.

The Referee: You put the Huntington Shore Well back on production?

A. We put the Huntington Shore Well back on production on the 26th of June at 10:00 P. M.

Q. Was it necessary for you to do this baling and so forth before you put it on production?

A. Yes.

Q. Explain what you mean by baling?

A. That is how you clean your wells out, you have what you call a baler, two joints of pipe. You go in and bale your well and keep baling it to see if you can clean your mud all out. We cleaned it to the bottom and there was no oil in it. We started

(Testimony of Earl Ross.)

to clean out the perforations and the bit to get the oil to come back.

Mr. Rifkind: Q. Now, if I understand you correctly, as the result of the infiltration of mud through the oil sand and up into the Huntington Shore Well, you were forced to shut down the operation of the Huntington Shore Well on or about June 7, 1940? A. Yes sir.

Q. And you did not resume or were not able to resume operations on the Huntington Shore Well until on or about [237] June 27, 1940?

A. Yes.

Q. Is that correct? A. Yes.

Q. At the time the Huntington Shore Well was forcibly shut down, what was its production?

A. It was doing 265 to 270 barrels a day.

Mr. Rifkind: Q. Now, when the Huntington Shore Well was put back on production on June 27, 1940, what was its production?

A. The first 24 hours was 168 barrels.

Q. Now, between that date what work did you do on the Huntington Shore Well to remove the mud and foreign substances that had come into the well?

A. We were washing and baling.

Q. And did that require labor and material and any apparatus? A. Yes.

Q. State to the Court what you mean by baling and washing?

A. You have to have a crew of four men and a machine to [238] pull your baler. You have a sand

(Testimony of Earl Ross.)

line with a baler and you use your tubing to run your washer in on to clean your perforations out.

Q. As a matter of fact, you alternately wash and bale?

A. Yes, you go in and wash for twenty-four hours and then you go in and bale.

Q. And all during that time your well is off production? A. Yes.

Q. Your tubing and rods have been left out of the well and are on the surface of the ground?

A. Yes.

Q. Or in the derrick rack?

A. Yes. Well, while you are baling and washing you use your tubing.

Q. You say that well was off production for approximately twenty days, is that right?

A. Yes sir.

Q. And that the daily production while that well was shut down was approximately 165 barrels per day?

A. When it first went off it was at 265 barrels per day.

Q. I mean 265.

The Referee: It didn't do anything while it was shut off?

A. Not a thing. For the nineteen or twenty days there was no oil at all.

Mr. Rifkind: Q. Did you get any gas during the twenty days while it was shut down? [239]

A. No.

(Testimony of Earl Ross.)

Q. You lost all the gas? A. Yes.

Q. Do you know what the former income of the wet and dry gas is?

A. No, I don't. I didn't check with Texaco on that.

Q. Now, did you examine the mud which you took out of the Huntington Shore Well and compare it with the mud that was being used by the Bolsa Chica Oil Corporation, or in the re-drilling of the Bolsa Chica Well? A. Yes sir.

Q. And how did they compare?

A. The same.

Q. Well, prior to the re-drilling by the Bolsa Chica Oil Corporation, was there any mud in the Huntington Shore Well? A. No sir.

Q. How much was it cutting?

A. Four to five per cent was the most the well ever cut.

Q. And that was water, was it not?

A. 4.5 is the most it ever cut before of water.

Q. And none of that cut was mud or sand?

A. No sir.

Q. Or anything like that. Now, Mr. Ross, what effect did this mud have upon the tubing and rods of the Huntington Shore Well, or what effect would the continued use of mud as [240] a re-drilling fluid by the Bolsa Chica Oil Corporation have upon the tubing and rods and pump of the Huntington Shore Well?

(Testimony of Earl Ross.)

A. Why, if we had mud in it would ruin it. They would not be no good.

Q. In other words, as long as the Bolsa Chica Well continued to use mud the Huntington Shore Well cannot operate?

A. Not if it is in the same channel.

Q. And have you in your experience known of wells which have been completely lost by reason of freezing and clogging due to the use or seepage of mud as a drilling fluid? A. Some, yes.

Q. Mud, when used as a drilling fluid, is in liquid form? A. Yes.

Q. And it accumulates a certain amount of what is commonly known as cuttings? A. Yes.

Q. And sand? A. Yes.

Q. And other foreign substances?

A. Yes.

Q. And the mud carries those foreign substances through the oil sands up and into the well?

A. Yes.

Q. And those foreign substances work between the tubing and rods and get into the pump, is that correct? [241] A. That is it.

Q. Now, these oil sands, are they porous?

A. Yes, they channel. [242]

Q. Now, Mr. Ross, when this mud infiltrates and passes through the porous oil sands you have mentioned, does a certain amount of it settle and harden in the oil sand?

(Testimony of Earl Ross.)

A. A certain amount hardens and packs in and shuts it off.

Q. When the mud with its cuttings and sand and other foreign substances gets into the adjoining well which is on production, doesn't a certain amount settle to the bottom and cling to the sides and clog up the tubing and rods in operation?

A. Yes sir.

Q. In other words, while the mud is in liquid form in the process of re-drilling it solidifies when it leaves the well that is being re-drilled, is that it? A. Yes sir. [243]

Cross Examination

By Mr. Pallette:

Q. I believe you testified, Mr. Ross, that the oil comes into the hole through channels in the sands?

A. Yes. [252]

Q. Your well was on the pump on the 8th day of June, along in that time? A. Yes sir.

Q. And the oil is sucked out of the hole through these channels into the hole and through the action of the plunger of the pump? A. Yes sir.

Q. Did you shut down your well or was your well shut down at the time the mud appeared inside the hole? A. No sir.

Q. Or was it pumping? A. Pumping.

Mr. Pallette: That is all. [253]

Q. And when you say the Bolsa Chica Well lost circulation and the Huntington Shore gained it, the

(Testimony of Earl Ross.)

circulation disappeared from the Bolsa Chica Well and came in the Huntington Shore Well?

A. Yes sir.

Q. And at the time that took place was there any mud of any kind being used on the Huntington Shore Well? A. No sir.

Q. And the minute that mud appeared it started to affect the operations of the Huntington Shore Well? A. Yes.

Q. And pretty soon you had no oil at all in the well? A. No oil, and pumping mud.

Q. You say Mr. Anderson told you they lost circulation at 4413 feet. From your experience in the Huntington Beach field, do you know whether 4413 feet is a part of the producing-oil zone in the Huntington Beach oil field?

A. It is at the top strata of the gas zone.

Q. It is a part of the oil zone?

A. Yes. [254]

VERNON KING,

called as a witness on behalf of the Trustee, being first duly sworn, testified as follows:

The Referee: Give your full name to the reporter? A. Vernon King.

Q. And your address?

A. 401 Haas Building.

The Referee: You may proceed.

[Testimony of Vernon King.)

Direct Examination

By Mr. Dechter:

Q. What is your occupation or profession?

A. Petroleum geologist and engineer.

Q. Are you a graduate of any school in which you majored in geology or petroleum engineering?

A. Yes sir.

Q. What university? A. Stanford.

Q. How long have you been engaged as a geologist and petroleum engineer? A. Since 1919.

Q. How long have you been practicing that profession in California? A. Since that time.

Q. Are you familiar with the Huntington Shore oil field? A. I am. [256]

Q. How long have you been engaged as a petroleum engineer and geologist in the Huntington Beach oil field?

A. The first well there was in 1920 or '21; 1921, I think.

Q. You have been engaged there continuously?

A. No, intermittently.

Q. Are you also familiar with the portion of the Huntington Beach field which is called the tideland area? A. I am.

Q. How long have you been engaged in that particular area?

A. Since,—roughly, since 1932. I think it was discovered about that time.

[Testimony of Vernon King.)

Q. Are you familiar with the Huntington Shore Well?

A. I am. I am familiar with the re-drilling of it since 1937.

Q. In other words, you have been acting as petroleum engineer on the Huntington Shore Well from the time it was re-drilled in 1937?

A. Yes, I was the engineer on the well at the time it was re-drilled in 1937.

Q. Have you been employed by the State of California as Consulting Engineer in connection with the Huntington Beach area? [257]

A. Well, I am not employed by them. I am on their consulting staff.

Q. I see. Are you familiar with the Bolsa Chica Petroleum Fee Well?

A. I am generally familiar with the operations carried on there in June.

Q. You are also familiar with the general area in the Huntington Beach field? A. Yes.

Q. And the wells producing therefrom. In other words, you have had access to the drilling records and production records?

A. Access and examination of the completed data, and have worked on a good many of the wells as engineer.

Q. You have made an examination and analysis of the surveys, plats, courses and charts on file with the Division of Lands of the State of California

[Testimony of Vernon King.)

showing the costs of the Petroleum Well at Huntington Beach, California? A. I have.

Q. You are also familiar with the nature of the stratigraphy, as it is termed, of the oil sands in the Huntington Beach area? A. Yes sir.

Q. Were you employed as petroleum engineer of the Huntington Shore Well on or about June of 1940 when a column of mud appeared in the Huntington Shore Well while it was on [258] production and pumping oil? A. I was.

Q. Will you please state to the Court just what you observed as the result of your investigation?

A. Briefly, the Huntington Shore Well was on steady production and had been for a number of years producing at the rate of variously from 275 to 300 barrels per day. It was pumping at that rate. The well suddenly failed—producing both oil and gas, and the well suddenly, on about June 8, shut off the gas or the gas stopped coming in and in about an hour and a half started to produce pure mud. Within a couple of hours a pulling unit had arrived and the rods and tubing pulled out and we found the mud was up to about 1900 feet from the surface, or about 3700 feet of mud.

Q. In other words, a column of mud extending from the bottom of the hole up 3700 feet?

A. Yes, up to the casing. That is the measured depth of the hole.

[Testimony of Vernon King.)

Q. What would have happened to the tubing and rods if the tubing and rods had not been removed within an hour after that mud was discovered in the well?

A. Generally they stick. You don't pull them out.

Q. If the tubing and rods should be frozen, as the expression is used, by the hardening of the mud that infiltrated into the Huntington Shore Well, what would have happened to the Huntington Shore Well? [259]

A. Anything from a fishing job to an abandonment of the well, depending on how much of that mud could get out or whether you could get it all out.

Q. Would you say there was grave danger of the well being lost by reason of the infiltration of mud? A. Yes, there is always a danger. [260]

Q. And calling your attention to the point at 4413 feet where the Bolsa Chica Petroleum Fee Well enters the oil sand can you tell us what distance the bottom of the Bolsa Chica Well at that depth was from the producing oil sands of the Huntington Shore Well?

A. The well was approximately scaled on the surface, scaled about 110 feet from the casing of the Huntington Shore Well. That casing, however, is blank down a couple of hundred feet below that, I should say roughly 110 feet apart, and in the

[Testimony of Vernon King.)

hole the mud would probably travel another 150 or [261] 200 feet in the casing to get into the hole. It would be a right-angle bend there. [262]

Q. What was the effect of the infiltration of this column of mud, 3700 feet high, in the Huntington Shore Well on the production of oil from the Huntington Shore Well?

A. It absolutely cut it off. There was no production at all either of oil or gas.

Q. And what was necessary to be done to bring the Huntington Shore Well back on production after that occurred?

A. It was necessary to clean that mud out and that was done by alternately baling and washing.

Q. Are you able to estimate the expense the Huntington Shore Well was put to in replacing the Huntington Shore Well on production?

A. The actual baling and cleaning operations took some twenty days, something over—about thirty-two to thirty-five hundred dollars. Then there was a loss of oil there for those twenty days which would amount to about 6,000 barrels of oil. The market price was ninety cents.

Q. Was there any permanent effect on the amount the Huntington Shore Well was capable of producing after this [264] mud had entered and after the well had been cleaned out and placed on production again?

[Testimony of Vernon King.)

A. Yes, the well after two months is making fifty to seventy-five barrels less than it did before, and making less gas than it did before.

Q. And in your opinion is that decrease in the production of oil and gas in any wise chargeable to the infiltration of mud in the Huntington Shore Well?

A. I believe it is.

Q. Isn't it a fact that mud has a tendency to shut off the oil channels which have been constantly piling and widening and opening?

A. Once sand is mudded up there are certain physical conditions that govern the removal of that sand and mud. We do not always understand exactly what they are and sometimes when we do we cannot correct them, but it generally happens once a well has been mudded off, especially a well that has been producing, some rejuvenation of that well, or complete rejuvenation of that well, is not possible. [265]

[Testimony of Vernon King.)

(TRUSTEE'S EXHIBIT NO. 1)

Hubert F. Laugharn

Trustee in Bankruptcy in the Matter of
Jack Dave Sterling, Bankrupt.

September 26, 1940

To

Bolsa Chica Oil Corporation

In re: Huntington Shore Well, Huntington Beach, Calif.

Loss of production of oil for 20 days, June 7 to June 27, 1940, 265 barrels per day at 90¢ per barrel	\$ 4,770.00
Loss of production of wet and dry gas, June 7 to June 27, 1940, 20 days.....	248.00
Loss of production of oil as result of reduction in output, June 27 to Sept. 1, 1940, 3,700 barrels @ 90¢	3,330.00
Loss of production of wet and dry gas as result of decline, June 27 to Sept. 1, 1940.....	550.00
Pulling, baling, washing and other materials, labor and technical assistance in removing mud, sand and other foreign substances.....	3,642.00
	<hr/>
	\$12,540.00

[Endorsed]: Trustee's Exhibit No. 1. Filed
Sept. 26, 1940. Ernest R. Utley, Referee.

[Endorsed]: Filed Dec. 31, 1940. R. S. Zimmer-
man, Clerk. [96]

Mr. Dechter: Q. Mr. King, did you prior to
June 7, 1940, give your consent in writing to the
Bolsa Chica Corporation for the use of drilling

[Testimony of Vernon King.)

mud in their Bolsa Chica Well? A. No sir.

Q. Did you at any time prior to June 7, 1940 verbally give your consent to their using drilling mud in their well?

A. In using drilling mud in their oil sand?

Q. In other words, calling your attention to the language of the order for injunction, did you at any time give your consent to use anything other than crude oil while drilling in the oil sand?

A. No. At each time the question came up it had come up of course there was to be virgin crude oil to be used in the [269] oil sand. [270]

Cross Examination

By Mr. Palette:

Q. I believe you testified you at no time gave your consent to drilling with anything except virgin crude oil in the oil sand? A. Yes.

Mr. Dechter: To which we object as incompetent unless the consent had been in writing and the writing is exhibited to the witness, the order for injunction calling for consent in writing.

The Referee: Objection overruled.

The Reporter: "Yes."

Mr. Palette: Q. I take it from the fact you limited your answer to the oil sand that you did consent to the use of mud above the oil sand, that is in the shale body?

Mr. Dechter: To which we object as immaterial. All the respondents are being charged with is using

[Testimony of Vernon King.)

drilling mud in the oil sand in violation of that portion of the injunction which requires them to use virgin crude oil.

Mr. Cree: If that is the case—well, go ahead.

Mr. Palette: Your objection then is to the use of mud in the oil sand?

Mr. Dechter: That is right.

Mr. Palette: And that is all?

Mr. Dechter: In the oil zone. I want to retract that statement. Mr. Rifkind calls my attention to the fact the [272] injunction is broader than that, and I will withdraw my objection.

The Referee: The objection to the question is overruled. Read the question.

(The reporter read the pending question as follows:

“Q. I take it from the fact you limited your answer to the oil sand that you did consent to the use of mud above the oil sand, that is in the shale body?”)

A. I was naturally at the well considerably, a several number of times and in discussing those things I referred them that I was under, working under the injunction and that I could not except by writing do or give them consent to use mud in the oil zone.

Mr. Palette: You mean in the oil zone?

A. In the oil zone, yes, and since the mud was discussed previous to the time or during the time the injunction was being sought. That was understood by both parties.

[Testimony of Vernon King.]

Mr. Palette: Will you read that answer?

(The reporter read as requested.)

The Referee: Do I understand by that answer you never at any time gave any consent in writing to use mud?

A. No. It was recognized by all parties mud was being used until they reached the oil sand. Naturally, they being the oil operators, it was incumbent on them to tell just when they entered that zone.

The Referee: But you did not give them consent yourself? [273]

A. No, no.

Mr. Palette: Q. It is true, Mr. King, that you were at the well, I won't say every day but several days a week during the proceedings?

A. Yes.

Q. And that all records and operations were made available to you during that time by the operators of the Bolsa Chica Well?

A. I think all of them.

Q. And all that you asked for? A. Yes.

Q. You were familiar with the fact that immediately after circulation was lost it was necessary for the Bolsa Chica to go back into the hole with a mixture of Aquajel in order to restore circulation?

A. Yes.

Q. And you were present at the well during those operations? A. I was.

Q. And did you at any time discuss with Mr. Anderson or Mr. Nichols what they were proposing

[Testimony of Vernon King.)

to do at that time and how they were going to do it?

A. Why yes. We had a number of discussions on it and naturally wanted to be helpful and for that reason we closed our well in for eight days so that they might complete their operations even after they had mudded our well up. [274]

Q. That is, completing their job by the use of mud and Aquajel to restore the necessary circulation?
A. Yes.

Q. You knew in running their casing it was necessary to restore circulation and in so doing they were going to use mud and the mixture of Aquajel?

A. Yes.

Q. You are also familiar with the fact that from that time on for about approximately forty-five days they continued to drill with mud?

A. In different holes. They had several different holes there.

Q. In other words, I will reframe the question—

A. Above the oil zone. They were above the oil sand most of the time.

Q. They did not approach the oil sand again until the latter part of July, and from the 8th of June until the latter part of July they were not in the oil sand and at all times were drilling with mud with your knowledge and consent?

Mr. Dechter: To which we object on the ground it is incompetent, irrelevant and immaterial. This witness would have no right to give any consent except by a document in writing.

[Testimony of Vernon King.)

The Referee: Objection sustained.

Mr. Palette: May it please the Court, with reference to your ruling on that objection if I may make a statement [275] with reference to it?

The Referee: Very well.

Mr. Palette: At the time this injunction was agreed to we had a conference between the engineers here during the afternoon, if you will recall, which was solely with reference to the direction and course of the well. The engineers eventually agreed on a course that was satisfactory. We then started to draft the form of the order, Mr. Rifkind did, and he suddenly said that he wanted a provision there with reference to the use of a circulating medium restricting it to oil, which was completely outside of any argument which had taken place up to that time. Mr. King was present, Mr. Templeton, Mr. Anderson and Mr. Jussen. As I recall the conversation was to the effect that if we would agree to a clause being inserted in the injunction to the effect we would not use anything but oil except with Mr. King's consent, that we would have no difficulty if something unforeseen came up if we had to use mud, that they were sure the engineers could get together on it and work it out without any trouble. The provision as to the writing was put in by Mr. Rifkind without any discussion, purely as I saw it as a matter of evidence, something to evidence that consent. It does not go to the fact of the matter that what we were doing was to be subject at all

[Testimony of Vernon King.)

times to the supervision and control of Mr. King, but if something came up, we had to back up to cement he was to have supervision [276] over that. If it turned out there was some circulating medium better than oil, and there was considerable discussion about the Shell patented medium which might be better, our engineer was to get together with him and everybody was sure there would no difficulty. The main argument was about the course, and we did not consider there would be any question at all about,—any serious question arise as to the use of mud which could not be settled between the engineers.

Subsequently, it turned out we could not use oil in our operations in the shale. It is my understanding that Mr. King was contacted, that our engineer did not understand at the time it was necessary to get his consent in writing, that he conferred at all times with reference to what he was going to do with Mr. King, that Mr. King had knowledge of what was going on for a period of approximately forty-five days.

The Referee: Isn't that a matter of defense on the part of the respondents to the order to show cause rather than on the affirmative?

Mr. Palette: Well, on direct here it was brought out he at no time consented in writing to the use of mud. I am merely trying to bring out he did consent to the use of mud in the shale body and at no time saw any objection to the use of mud in the shale body until the 31st of July and for a

[Testimony of Vernon King.)

period of approximately two months with the knowledge and [277] oral consent of Mr. King we in good faith proceeded to drill in the shale body, and when he eventually requested us to change to oil when we got to the oil body we did change to oil.

Mr. Dechter: If counsel's statement is a statement in the nature of an offer of proof we object as incompetent and as being a collateral attempt to impeach an order which has now become final, and the only way of securing relief from this order is by making an application to the Court. [278]

The Referee: I think I will let my ruling stand as made, and if you intend the statement just made as an offer of proof I will sustain the objection to it.

[279]

(TRUSTEE'S EXHIBIT No. 2)

July 31, 1940.

Bolsa Chica Oil Corporation,
555 South Flower Street,
Los Angeles, California

Gentlemen:

An Injunction against the Bolsa Chica Oil Corporation was issued in the Matter of Jack Dave Sterling, Bankrupt, District Court of the United States, Southern District of California, Southern Division, In Bankruptcy No. 26685-Y, on May 15, 1940, enjoining the Bolsa Chica Oil Corporation, its superintendent, agents and employees from using mud as a circulating fluid in the redrilling of its "Fee No. 1 Well" at Huntington Beach, California.

We have been informed that despite said injunction and without our consent and in direct refusal of our consent you are using mud as a circulating fluid in the redrilling of said well.

This is to notify you that unless you forthwith desist using mud as the circulating fluid in the redrilling of said well that an application will be made to the United States District Court to have you cited and punished for contempt for violating said injunction aforesaid.

Yours truly,

JOSEPH J. RIFKIND and
RAPHAEL DECHTER

By JOSEPH J. RIFKIND

Attorneys for Hubert F. Laugharn, as Trustee in Bankruptcy of Jack Dave Sterling, Bankrupt.

JJR:S

c/c Bolsa Chica Oil Corporation

Huntington Beach, California Spec. Del.

Attn: Mr. Anderson, Superintendent Reg.

RRR

Overton, Lyman & Plumb,

Attn: Mr. Palette.

(blind)

Dechter

Laugharn

Sterling

King

(Receipts for Registered Articles Nos. 352963 and 352964 attached.)

(Return Receipts dated August 1, 1940 and signed by Bolsa Chica Oil Corp. by Mrs. Jr. Nichols and By Bolsa Chica Oil Corp. by John W. Deichman attached)

[Endorsed]: Tr. Exhibit No. 2 (4 documents). Filed September 26, 1940. Ernest R. Utley, Referee.

(TRUSTEE'S EXHIBIT No. 3)

DRILLING AND OPERATING AGREEMENT

This agreement, made and entered into this 14th day of August, 1940,

By and between

Bolsa Chica Oil Corporation, a corporation,
as First Party, hereinafter called

“Bolsa Chica”,

and

M. M. McCallen Corporation, a corpora-
tion, as Second Party, hereinafter called

“McCallen”.

Witnesseth:

That whereas, concurrently herewith Bolsa Chica has assigned to McCallen that certain Oil and Gas Lease, and the leasehold thereby created, made and entered into on the 20th day of February, 1940, by and between The Petroleum Company, a corporation, as Lessor, and Bolsa Chica Oil Corporation, as Lessee, covering and demising the following described real property, to-wit:

Lots Twenty (20) and Twenty-two (22), Block One Hundred Nineteen (119), in the City of Huntington Beach, County of Orange, State of California, as per map recorded in Book 4, Page 10 of Maps, Miscellaneous Records of said Orange County,

which said assignment is absolute in form but is, in truth and in fact, made subject to the agreements and conditions hereinafter set forth in this Agreement; [97]

And whereas, the parties hereto desire to and do hereinafter set forth the agreements and conditions upon which and subject to which said absolute assignment is made,

Now, therefore, the parties hereto do agree as follows:

1. Bolsa Chica hereby gives and grants to McCallen the right to take possession of the herein premises, together with the idle oil well now located thereon and the equipment appurtenant thereto, including all drilling equipment, casing, cement, oil, mud, bits, etc., now therein and thereon, with the right to use all such equipment and personal property, free of cost, in the reconditioning, re-drilling and placing on production of the said well as a producing oil well, and together with the right thereafter to produce the said premises, all upon the terms and conditions hereinafter set out. McCallen agrees, at all times that it is in possession of the herein premises, to faithfully perform the agreements and observe the conditions in the Oil and Gas

Lease demising the herein premises, or the leasehold thereon, except as in this Agreement otherwise provided. McCallen further agrees to immediately commence operations in and on the said well now standing idle on the herein premises and to thereafter carry on such operations without interruption, until such time as said well has been placed on production as a producing oil and gas well or until such time as the herein premises are reconveyed to Bolsa Chica. In this connection, it is understood that if McCallen fails, within a period of forty-five (45) days to complete its drilling and reconditioning operations hereunder, its rights to the herein premises shall cease and terminate and it shall then be under obligation to reconvey the said premises to Bolsa Chica, free of any claim hereunder thereto; and McCallen agrees so to do. [98]

2. If, as, when and after the herein premises are, by the efforts of McCallen hereunder, made to produce oil, gas and/or other hydrocarbon substances, it is understood that the proceeds realized from the sale of all such production shall be disbursed by McCallen as follows:

First: All federal, state, county and municipal taxes, assessments for the production fund of the State and any other taxes, assessments or levies which must be paid on account of the discovery or production of oil, gas and other hydrocarbon substances on or from the herein premises, whether assessed upon the land, or as mineral rights, severance taxes, or otherwise.

Personal property taxes, however, shall be paid by McCallen out of the operating allowance agreed to in sub-paragraph Fourth of this paragraph.

Second: Fifteen per cent. (15%) of the balance of such proceeds shall be paid to the Lessor and/or assigns of the Lessor named in the Lease demising the herein premises and owning the landowner's or Lessor's royalty, all as agreed in the original Lease demising the herein premises.

Third: All compensating royalties payable to the State of California, and all expenses incurred incidental to obtaining and carrying out the provisions of the compensating royalty agreements and the fees and expenses payable to the Huntington Beach Townsite Association in connection with the maintenance and operation of the herein well.

Fourth: Then, out of the remaining proceeds, McCallen shall, each month, retain, for the operation, maintenance and repair of the herein well, during the productive life thereof, the actual costs and expenses thereof, together with the excess, if any, over the said actual costs and expenses caused by the expense of dehydrating the oil produced.

Fifth: The money remaining each month, after making the payments in the preceding sub-paragraphs of this Paragraph 2, shall be retained or paid by McCallen as follows:

(a) Eighty per cent. (80%) thereof shall be retained by McCallen until such time as it has been thereby repaid all costs and expenses incurred by it in and about its operations hereunder in reconditioning, redrilling and placing on production of the herein well.

(b) The balance, or twenty per cent. (20%) thereof, shall be paid to Bolsa Chica until such time as McCallen has been reimbursed as just hereinabove set out. [99]

Sixth: The money remaining each month, after all the foregoing payments have been made and reimbursements had, shall be retained or paid by McCallen, as follows:

(a) Eighty per cent. (80%) thereof shall be paid to Bolsa Chica until such time as Bolsa Chica has been thereby paid the sum of Forty Thousand Dollars (\$40,000.00). In this connection, it is understood that the money theretofore paid to it by McCallen, as agreed in sub-paragraph Fifth hereof, shall be a credit to McCallen toward the payment of said sum of Forty Thousand Dollars (\$40,000.00).

(b) The balance, or twenty per cent. (20%) thereof, shall be retained by McCallen until such time as Bolsa Chica has been paid the sum of Forty Thousand Dollars (\$40,000.00), as just hereinabove set out.

Seventh: After all the payments have been made and the reimbursements had, as set forth in all of the foregoing sub-paragraphs of this Paragraph 2, McCallen shall, each month, during the remainder of the life of the herein well, pay one-half ($\frac{1}{2}$) of such remaining money to Bolsa Chica and shall retain the remaining one-half thereof.

All payments herein made shall be made on or before the 25th day of each month for oil and gas produced, saved and sold during the preceding calendar month.

3. The costs and expenses of reconditioning, re-drilling and otherwise working in and about the herein well and placing the said well on production, shall include all payroll expense, compensation and other necessary insurance carried, costs of all materials and supplies and other personal property used, including bits, welding, cement, cementing, rentals and every other thing used or service required in and about such operations of McCallen hereunder.

4. McCallen shall, at any time hereafter, have the right to abandon operations on the herein well, and thereupon all rights and obligations of each party to the other shall cease and terminate; and upon such abandonment, McCallen shall have the right to remove from the premises the equipment placed therein and thereon by it. [100]

5. Title to all oil well drilling and producing equipment and personal property in, on and about the herein premises and the well hole thereof, shall remain in Bolsa Chica until such time as Bolsa Chica has been paid the sum of Forty Thousand Dollars (\$40,000.00), as hereinabove set forth. Thereafter, such equipment shall be owned by the parties hereto in equal undivided parts. It is agreed, however, that all drilling and other miscellaneous equipment not necessary for use in producing said well, now owned by Bolsa Chica and in and on said well, shall, at the termination of its use by McCallen be returned at the well site to Bolsa Chica for removal by it.

6. Bolsa Chica may, at all reasonable times, examine the herein premises, the work done and in progress thereon, and the production therefrom, and may inspect the books of account kept by McCallen in relation to the production from said well and the costs and expenses of all operations carried on by McCallen hereunder.

7. McCallen shall, at all times hereafter, have the absolute management, control and direction of all drilling and producing operations on the herein premises.

Nothing herein contained shall be considered as making the parties hereto partners, joint adventurers, or associates of any kind, it being the intention of the parties hereto that the only interest of Bolsa Chica hereunder shall be its right to be paid

by McCallen the proceeds from production of the herein well, as hereinabove agreed, as consideration for the assignment of the herein Lease, leasehold and well.

8. In the event commercial production is obtained from said well, Bolsa Chica agrees to pay the Four Thousand Dollars (\$4,000.00) cash payment for the purchase price of certain personal property on said premises, as set forth in [101] Paragraph 16 of the above mentioned Oil and Gas Lease of February 20, 1940, and shall have no right to reimbursement therefor hereunder as against McCallen. In short, it is understood that the whole of said Four Thousand Dollars (\$4,000.00) shall be paid by Bolsa Chica outside the agreements herein contained.

9. This Drilling and Operating Agreement shall not be assigned, in whole or in part, by McCallen without the written consent of Bolsa Chica first obtained, and the herein premises shall not be underlet or sublet, in whole or in part, without the like written consent of Bolsa Chica first obtained.

10. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

It witness whereof, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, and their respective cor-

porate seals to be hereunto affixed, all as of the day and year first hereinabove written.

BOLSA CHICA OIL
[Corporate Seal] CORPORATION
By THOS. W. SIMMONS
President
By W. S. PALLETTE
Secretary
“First Party — Bolsa Chica”
M. M. McCALLEN
CORPORATION
By H. H. McVICAR
President
By C. M. ROOD
Secretary
“Second Party — McCallen”

[102]

State of California
County of Los Angeles—ss.

On this 14th day of August, 1940, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thos. W. Simmons, known to me to be the President, and W. S. Pallette, known to me to be the Secretary of Bolsa Chica Oil Corporation, the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

[Seal] GERTRUDE M. KNIGHT

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires July 20, 1942.

State of California

County of—ss.

On thisday of August, 1940, before me, the undersigned, a Notary Public in and for said County and State, personally appeared....., known to me to be the President, and....., known to me to be the Secretary of M. M. McCallen Corporation, the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

It witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

.....
Notary Public in and for said County and State.

[Endorsed]: Trustee's Exhibit No. 3. Filed Sept. 26, 1940, Ernest R. Utley, Referee.

[Endorsed]: Filed Dec. 31, 1940, R. S. Zimmerman, Clerk. [103]

(TRUSTEE'S EXHIBIT No. 4)

ASSIGNMENT OF OIL AND GAS LEASE

Know all men by these presents:

That Bolsa Chica Oil Corporation, a corporation, for and in consideration of the sum of Ten Dollars (\$10.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto M. M. McCallen Corporation, a corporation, that certain Oil and Gas Lease, and the leasehold thereby created, made and entered into on the 20th day of February, 1940, by and between The Petroleum Company, a corporation, as Lessor, and Bolsa Chica Oil Corporation, a corporation, as Lessee, covering and demising the following described real property, to-wit:

Lots Twenty (20) and Twenty-two (22), Block One Hundred Nineteen (119), in the City of Huntington Beach, County of Orange, State of California, as per map recorded in Book 4, Page 10 Maps, Miscellaneous Records of said Orange County,

To have and to hold unto the said M. M. McCallen Corporation, a corporation, forever during the remainder of the life of said Oil and Gas Lease of February 20, 1940.

It witness whereof, the Assignor herein has caused this Assignment to be executed by its duly authorized officers and its corporate seal to be here-

unto affixed, all as of this 14th day of August, 1940.

BOLSA CHICA OIL
[Corporate Seal] CORPORATION
By THOS. W. SIMMONS
President
By W. S. PALLETTE
Secretary [104]

State of California
County of Los Angeles—ss.

On this 14th day of August, 1940, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thos. W. Simmons, known to me to be the President, and W. S. Pallette, known to me to be the Secretary of Bolsa Chica Oil Corporation, the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

It witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Notarial Seal] GERTRUDE M. KNIGHT
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires July 20, 1942.

[Endorsed]: Trustee's Exhibit No. 4. Filed Sept. 26, 1940, Ernest R. Utley, Referee.

[Endorsed]: Filed Dec. 31, 1940, R. S. Zimmerman, Clerk. [105]

(TRUSTEE'S EXHIBIT NO. 6)

August 21, 1940

McVicar-Rood, Inc.
Huntington Beach,
California

Gentlemen:

Hubert F. Laugharn, as Trustee in Bankruptcy of Jack Dave Sterling, Bankrupt, has been informed that the Bolsa Chica Oil Corporation has or proposes to assign its oil and gas lease covering or enter into an agreement with you respecting its "Petroleum Well", also know as "Fee No. 1 Well", at Huntington Beach, California.

The Trustee in Bankruptcy hereby directs your attention to the fact that an injunction against the Bolsa Chica Oil Corporation was issued In the Matter of Jack Dave Sterling, Bankrupt, District Court of the United States, Southern District of California, Central Division, In Bankruptcy No. 26685-Y, on May 15, 1940, prohibiting the redrilling of said "Petroleum Well", also known as "Fee No. 1 Well", closer than 200 feet from the "Huntington Shore Well" of said bankrupt estate, measured on a horizontal plane, at any point beneath the depth of 3800 feet below sea level, and further providing that the circulating fluid used in the drilling, redrilling or sidetracking of said "Petroleum Well", also known as "Fee No. 1 Well", shall be virgin crude oil, and that no mud or other foreign substances shall be used as a circulating fluid.

A certified copy of the Injunction against the Bolsa Chica Oil Corporation is herewith enclosed for your formal notice. It is the Trustee in Bankruptcy's position that the Bolsa Chica Oil Corporation's assigns and successors are bound by said injunction. See *Lake v. Superior Court*, 165 Cal. 182.

Yours truly,

JOSEPH J. RIFKIND

JJR:S

Enc.

c/c Division of Oil and Gas,
State of California
629 South Hill Street,
Los Angeles, California

Division of Lands,
State of California,
State Building,
Los Angeles, California

c/c Hubert F. Laugharn, Esq. (blind)
Vernon L. King, Esq. “
J. D. Sterling, Esq. “
Raphael Dechter, Esq. “

Return receipt dated Aug. 22, 1940 signed by McVicar-Rood, Inc. attached.

[Endorsed]: Tr. Exhibit No. 6. Filed Sept. 26, 1940. Ernest R. Utley, Referee.

JACK DAVE STERLING,

called as a witness on behalf of the Trustee, being first duly sworn, testified as follows:

The Referee: Give your full name to the reporter.

A. Jack Dave Sterling.

Direct Examination

Mr. Dechter:

Q. What is your business, Mr. Sterling?

A. Oil operator.

Q: How long have you been so engaged?

A. Since 1928.

Q. Have those operations been confined to California? A. Yes sir.

Q. During your experience as oil operator how many wells [357] have you drilled or been interested in? A. Twenty-two.

Q. Where have those wells been located?

A. They have been located in Long Beach, Huntington Beach, the Torrance field and Bakersfield.

Q. Are you familiar with the Huntington Shore Well? A. I am.

Q. You were the one who originally drilled the Huntington Shore Well? A. Yes sir.

Q. Are you familiar with what happened in the Huntington Shore Well in 1937 when it became necessary to re-drill the same? A. I am.

Q. Will you state to the Court just what took place at that time?

(Testimony of Jack Dave Sterling.)

A. In 1937—I don't know if I got the question right. In re-drilling the well?

Q. What took place before it became necessary to re-drill the well, if you know?

A. In 1937 the well was drilled by the Termo Oil Company and they used some cement in plugging the hole—

The Referee: You are telling now what happened to cause a re-drilling of the well?

A. That is right, your Honor. And cement caused to stick the tubing in the Huntington Shore Well which is called a [358] fishing job, and we were unsuccessful in fishing tools out and therefore we had to re-drill the well.

Mr. Dechter: Q. In other words, this cement came from the Termo Well that at that time was drilled at or about the same depth as the Huntington Shore Well? A. Yes sir.

Q. And caused your tubing and rods to be stuck in the hole? A. That is right.

Q. And were you able to remove the tubing and rods?

A. There wasn't any rods in the hole. It was a flowing well.

Q. I see.

A. There was tubing in there, part of it we recovered and part left in the hole.

Q. What happened to the original hole by reason of cement coming in?

(Testimony of Jack Dave Sterling.)

A. We had to plug it off or re-drill it.

Q. When you say you had to plug it off, or re-drill it, do you mean you could use the original hole? A. Part of it.

Q. How much of it?

A. About forty-two hundred feet.

Q. And what did it cost you to re-drill that hole?

A. It cost us about \$80,000 plus twenty per cent.

Q. And would the entrance of mud from an adjacent drilling [359] well have the same effect on your tubing as cement?

A. There is no question about it.

Q. In other words, cement in the drilling well is in fluid or working condition just as drilling mud? A. That is right.

Q. And after it loses its water it hardens, and mud would harden the same as cement?

A. That is right.

Q. Were you the one who re-drilled this well for the Trustee at a cost of \$80,000? A. I did.

Q. Now, calling your attention to June 7. Are you familiar with what happened to the Huntington Well on that particular date? A. I am.

Q. Will you state to the Court just what you know about it?

A. In the morning Mr. Ross, he is Superintendent of the well in Huntington Beach, he called me and told me that the well started pumping mud so I immediately went over to Huntington Beach

(Testimony of Jack Dave Sterling.)

and I instructed him immediately to pull the tubing and the rods from the well in order not to stick the tubing and rods in the well so we would not have a similar job as we did in 1937 when the cement came through from the Termo Well. Immediately I went over to the Bolsa Chica Well and we found that they have lost mud. We taken a [360] sample of the mud that they lost and also taken samples of the mud we have received in the Huntington Shore Well.

The Referee: You say you took a sample of the mud that they lost. You mean you took a sample of mud at their well?

A. At their well and in the ditch and also a sample of the mud we received.

Mr. Dechter: Q. You took a sample of the mud at the Huntington Shore Well and at the Bolsa Chica Well, and did you observe whether they were the same or whether they were different?

A. The same mud.

Q. What else did you do at that particular time?

A. I instructed Mr. Ross to leave the well after pulling the tubing to stand until such time as they finished their well and he carried out my instructions.

Q. What happened after that?

A. In about twenty days later they have quit operating or doing any work on the well so we went in the hole and we found about thirty-five

(Testimony of Jack Dave Sterling.)

hundred feet of mud in the hole, and we started baling and washing out. After baling for about two days and cleaning out the hole we found there wasn't any oil, and after that we started washing the perforations to bring in the oil, which we did, and finally in a couple of days started to get the oil in after pumping the well two or three days finally putting it back on the same stroke as we had before the well went off. We found the best production [361] we can get is about 215 barrels, maximum production.

Q. And what was your average production before the well was mudded off?

A. Between 285 to 300 barrels.

Q. In other words, there was a loss, a permanent loss of about 75 barrels a day?

A. There is a permanent loss I would say of from 60 to 75 barrels a day.

Q. Do you have an opinion as an experienced oil driller and operator as to what caused the Huntington Shore Well to be mudded off?

A. Well, their hole was so close to this hole and when they broke circulation in their hole that caused the mud to come through into the Shore Well and mudded off.

Q. You testified before this Court on the hearing leading up to the injunction against the Bolsa Chica Oil Corporation?

(Testimony of Jack Dave Sterling.)

A. I did, and I stated in this court that that thing would happen before they even commenced drilling.

Q. In other words, you gave it as your opinion to the Court before the injunction was issued that if they used mud that is what would happen to the Huntington Shore Well? A. Yes sir.

Q. Will you state to the Court what would have happened if you had not maintained a constant vigilance on the Huntington Shore Well?

A. I am sure we would have another fishing job, a [362] re-drilling job.

Q. In other words, a similar experience to what you had in 1937?

A. Yes sir, correct. [363]

ALLAN A. ANDERSON

Direct Examination

Q. Would you state what happened in connection with the well on or about the 19th day of May, 1940?

A. Why, sometime after the middle of July—of May, I should say it was, we decided from our experience in encountering the lower portion of the hole that it would be impractical to attempt to complete the well from that particular location with respect to the hole due to junk and materials

(Testimony of Allan A. Anderson.)

that had been left in that particular hole on prior operations. So we decided to plug the well back and set a whipstock at some 130 feet above the old hole and to mill through the casing. We did set a whipstock and milled through the casing and in milling through the casing you have to cut metal from your casing and you must have some means of bringing the cuttings to the surface and so, knowing that, I contacted Mr. Vernon King and explained the situation to him and obtained from him his approval to the use of mud for the purpose of milling through a new window in the casing.

Mr. Dechter: We move to strike out the latter portion of the answer as not responsive, and a conclusion of the witness, and as incompetent for the reason that under the order of this Court such consent had to be in writing, and the statement of the witness he secured his consent is his [368] conclusion.

The Referee: It may be stricken.

Mr. Palette: Q. Mr. Anderson, at the time that you commenced to mill through the casing on or about the 18th day of May, 1940, did you place a telephone call to Mr. Vernon King, the engineer for the Trustee in Bankruptcy of the Huntington Shore Oil Well?

A. I did. It may be on the 17th of May but anyway I talked to Mr. Vernon King continuously during all operations and consulted and advised

(Testimony of Allan A. Anderson.)

him at all times as to just exactly what we were doing.

Q. At this particular time, however, on the 17th or 18th day of May at the time you commenced your milling operations you had a telephone conversation with Mr. King?

A. I did. That is right.

Q. At that time did you ask him to consent to the use of mud as a circulating medium for the purpose of your milling operations? A. I did.

Q. And did he consent? A. He did.

Mr. Dechter: To which we object as calling for the conclusion of the witness. The question was did he consent, and I move the answer be stricken out for the purpose of the objection.

The Referee: Stricken. Motion to strike is granted that [369] he consented, on the ground of a conclusion.

Mr. Palette: Q. At the time you made this request of Mr. King during this telephone conversation what did Mr. King say?

A. Why, this was over a period of three or four days the milling operations and cutting this window through the casing, and during that time I was talking with King from once to twice a day with respect to or in regard to the use of mud to drill through our fractured shale bodies from the window down to the top of the oil sand. When we finally milled through the window I asked Vernon

(Testimony of Allan A. Anderson.)

if it would be all right with him if we could continue to use mud to drill through the fractured shale bodies from our window to the top of the oil measure, and Vernon at first said he would have to think it over or talk about it—I think his exact words was to talk about it, so I continued talking with him for the next two or three days and finally obtained from Vernon the right to use mud.

Mr. Dechter: We move to strike out that statement as a conclusion of the witness.

The Referee: It may be stricken.

Mr. Palette: Q. What did he say?

A. Well, as to the exact wording, we were doing this in personal talks together there in the field and over the telephone, and the exact phraseology of it I can't say. I don't recall that because there were too many conversations. [370] It is an impossibility to remember the exact wording, but Vernon King knew at all times we were using mud and he gave us his consent to use mud.

The Referee: That is a conclusion.

Mr. Dechter: And we move to strike it as a conclusion.

The Referee: It may be stricken. State as near as you can what was said.

A. Well, I am sorry but I cannot quote him word for word. Now, we were talking about the mud—I can tell you this, that in attempting to get Vernon King's O. K. I consulted another party,

(Testimony of Allan A. Anderson.)

which party is interested in the field, and they in turn talked with Vernon King and then after Vern had talked with this party he gave me his consent as to the use of mud.

Mr. Dechter: We move to strike out the statement he gave his consent as to the use of mud as a conclusion of the witness.

The Referee: Motion granted.

Mr. Palette: Q. Mr. Anderson, cannot you tell us approximately what Mr. King said—not his exact words, but the substance of his statement.

A. I believe his exact words as close as I can come to it it would be, all right to use mud down to the top of the oil sand.

Q. In addition to that, did he not say it was his suggestion you drill forty or fifty feet into the oil sand? [371]

A. Mr. King——

Mr. Dechter: We object to counsel leading the witness.

The Referee: Objection sustained.

A. Mr. King——

Mr. Dechter: Just a moment. There is no question before you.

Mr. Palette: Will you read back, Mr. Reporter, Mr. Anderson's last answer?

(The reporter read from the record as requested).

(Testimony of Allan A. Anderson.)

Mr. Pallette: Q. Mr. Anderson, did he make any further statement with reference to the drilling of the well at that time?

A. Yes, he did. He recommended that due to his recent experience in the Huntington Beach field that it would be well for us to set our casing some forty or fifty feet into the oil sand.

Q. What did you say to that?

A. I replied to him, "No, Vern. Our agreement with you is when we get to the top of the oil sand that we will use oil and therefore we don't want to jeopardize our position in any manner so we prefer to change over to oil when we get to the top of the oil sand."

Q. Mr. Anderson, you continued to use mud in all your drilling operations from approximately the 17th day of—17th or 18th or 19th, whatever it was, of May up until what time? [372]

A. Up until the time that we had again—I say again because when our casing we pulled it and then had to re-drill our hole until we had gained a depth of 4408 feet which was our correlated marker of where we should encounter the top of the oil sand in the new hole.

Q. What approximately was the date of that?

A. I would say that was in July, the last half of July, the 17th or 18th or 19th.

Q. At that time what did you do?

A. At that time we changed over to oil.

(Testimony of Allan A. Anderson.)

Q. And have you used mud in any drilling operations since that time? A. We have not.

Q. During the period from the time that you just testified that you commenced using mud on or about the 18th of May until the time you changed to oil on or about the 17th day of July, 1940, was Mr. King present at the well at any time?

A. Why, Vernon King was at the well I would say at least every other day, maybe there was periods of three or four-day intervals when he was not present but over that entire period he was in constant contact with the well, either he or Mr. Earl Ross or the Huntington Shore pumpers, and of course I carried on conversations with Vernon King by telephone every few days as well to keep him advised when he didn't happen to be at the well. [373]

Q. When he came to the well or when Mr. Ross came to the well you would discuss with them what you were doing and what circulating medium you were using?

A. Why yes, we discussed the type of mud or, for instance, when we lost circulation we made up a mixture of Aquajel and Fibratex for the purpose of regaining circulation and so forth and Vernon King was there while we were mixing it and it was a matter of a few hours after we lost circulation that we regained it and we were all commenting on the ability of Fibratex to seal off the fractures and so forth.

(Testimony of Allan A. Anderson.)

Q. At no time during this period from the 17th of May to the 17th day of July did Mr. King or any other representative of the Huntington Shore Oil Well ever object to you with reference to the use of mud as a circulating medium in the well?

A. They did not, no. [374]

Redirect Examination

By Mr. Palette:

Q. I believe you testified, Mr. Anderson, that your correlation shows that you expected to reach the top of the oil sand from which you expected to produce at approximately 4400 feet?

A. That is correct.

Mr. Dechter: To which we object as incompetent and not the best evidence. The correlating he spoke about would be the best evidence.

The Referee: Objection overruled.

Mr. Palette: Q. When you reached a depth of 4400 feet what did you do?

A. We reached a depth of 4408 feet. Mr. Palette, and we changed to oil. [410]

Q. No, I am speaking of the——

A. Oh, pardon me. We took a core, yes, at 4400.

Q. And will you explain to the Court what coring is?

A. Coring is the act of obtaining a sample of the formation you are drilling through by the use of a core barrel. A core barrel is very similar to a bit with the exception it has a hole, a hollow space

(Testimony of Allan A. Anderson.)

in the center with a barrel above with a core catcher so that the formation is—you drill around the formation.

The Referee: In other words, it is a means—

A. Of recovering a sample of the formation you are drilling in. It is representative. You receive a sample and pull it to the surface so you can physically make an inspection of the formation you are drilling in.

Mr. Palette: Q. You had not seen anything in your cuttings which would indicate to you you were already in the sand at the time you stopped actual drilling and commenced coring?

Mr. Dechter: To which we object as leading and suggestive.

The Referee: It is leading. Objection sustained.

Mr. Palette: Q. Had you seen any sand, any oil sand in your cuttings above the depth of 4400 feet?

A. Why, Mr. Palette, we had seen sand in our cuttings that we did not identify as the oil sand we wished to produce from. [411]

Q. Excluding the Jones sand?

A. No, we had not. We had been watching the ditch samples and correlating shale.

Q. Why did you core at 4400 feet?

A. We cored at 4400 because our examination and correlations of the various wells I mentioned this morning indicated we should top the oil sand at approximately 4400 feet.

(Testimony of Allan A. Anderson.)

Q. What did your thirteen feet of core show?

A. It consisted of eight feet of shale, some of which was fractured and some of which was solid. Then there was a marker, a white limestone marker varying in width from one inch to three inches. That indicated to us that we were at the top of the oil sand, and then we had approximately four to five feet of oil sand in the lower portion of the core.

Q. That was the first evidence you had that you were in the sand?

A. That is correct, the first evidence we had.

Q. Whereupon, you immediately ceased further drilling?

A. That is correct.

Q. Now, referring to—

The Referee: Pardon me. Didn't you say you went down 4408 feet and took your sample and then went down to 4413?

A. Went to 4413? No, we started coring at 4400 feet even but our core was thirteen feet in length. We actually recovered thirteen feet of formation in the core. To 4408 was shale. [412]

Q. But from 4400 feet to 4413 you used mud?

A. Yes. We could not tell exactly where we would pick up the sand. As far as that is concerned, we are under orders of the Division of Oil and Gas, who have police powers over the field, and they stated we should obtain a core of the top of the oil sand before setting casing. We were so advised by the Deputy of the Division of Oil and Gas in writ-

(Testimony of Allan A. Anderson.)

ing so it was necessary to core to comply with their instructions.

Mr. Pallette: Q. Now, referring to the period around the 17th of July, 1940, I believe you testified this morning that you drilled to a depth of some 4800 feet? A. 4858.

Q. At that time you were drilling with oil?

A. That is correct.

Q. And you had been drilling with oil from what depth?

A. We lost our hole as I further testified and then recovered it by directing the hole into the old hole by using the knuckle and whipstock and when we obtained 4408 feet we changed to oil and made the hole from 4408 to 4458 with oil.

Q. Will you explain to the Court what happened when you reached the depth of 4458 feet?

A. Why, the oil—there had been some pressure brought on us by the State to use a lighter-gravity oil than I had been using so we did turn to a lighter-gravity oil and the [413] lighter-gravity oil cut the mud cakes off the wall of the fractured shale body and allowed the shale to come into the hole, lubricated with this light oil, and the fact twenty-three-gravity oil, a column of fluid say 4,000 feet of twenty-three-gravity oil has a lesser weight at the bottom of that column of fluid than is carried in the fractured shale body. Fractured shale body has gas pressure in it of about 1450 to 1500 pounds of pressure so it becomes an absolute impossibility now to

(Testimony of Allan A. Anderson.)

to drill through the lubricated shale body by the use of oil. You can withhold the fractured shale as long as you are applying your pump pressure but when you cease the pressure and pull the drill pipe from the hole then your formation pressure exceeds that that would be created by a column of fluid of twenty-three-gravity oil.

Q. I want you to explain what you physically did. Why didn't you drill any deeper?

A. Why, our pipe started to freeze on us on this fractured shale coming in and it became locked so we pulled our pipe out of the hole.

Q. Then you tried to go back in again?

A. Yes.

Q. How deep were you able to get?

A. Why, I believe the greatest depth we went to was—that is with oil.

Q. Yes.

A. We finally wormed our way and circulated and backed up [414] and one thing another down to 4186 or maybe 4286. I just cannot tell you the exact depth, but between those depths.

Q. It was above 4200 feet?

A. It might have been a little below 4200; might even have been 4210. I couldn't say without the log.

Q. You testified the top of the oil sand was 4408?

A. That is correct.

Q. What was the reason you could not go any deeper than approximately 4200 feet?

(Testimony of Allan A. Anderson.)

A. On account of the pressure and the fractured shale being lubricated with oil, permitting the shale to come in and freeze the pipe. When shale runs in it draws friction on your drill pipe over a long space like two or three hundred feet, and the final section we pulled out, the casing had caved into the hole and pulled it up a couple of hundred feet.

Q. And your hole is full of shale? A. Yes.

Q. And that is why you could not go down further without re-drilling?

A. That is right, due to gas pressure. This gas pressure also aerates your light-gravity oil which again lightens the ability of your oil to apply pressure to the shale body.

Q. When you stopped drilling your hole was only open to approximately 4200 feet, is that correct?

A. I would say that is right, yes. [415]

Q. So far as you know, that is the condition of the hole at the time the well was transferred to the McCallen Corporation? A. Yes sir [416]

[Endorsed]: Filed October 10, 1940. Ernest R. Utley, Referee.

[Endorsed]: Filed December 31, 1940. R. S. Zimmerman, Clerk. [416]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT
OF

1. Further hearing on return of order of February 9, 1941, to George T. Goggin, to show cause any the certificate of contempt filed December 31, 1941, should not be dismissed.
2. Hearing on return of order of January 13, 1941, to Bolsa Chica Oil Corporation, Thomas W. Simmons, Allan A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation and W. H. Cree to show cause why they should not be adjudged in contempt pursuant to the certificate of the referee.

APPEARANCES:

Mr. Raphael Dechter, and

Mr. J. J. Rifkind.

For Trustee.

Overton, Lyman & Plumb,

By Mr. Eugene Overton and

Mr. W. S. Palette.

For Bolsa Chica Oil Corp.,

Thomas W. Simmons and

Allan A. Anderson.

Mrs. Elizabeth Hensel,

For H. H. McVicar, C. M. Rood,

M. M. McCallen Corp. and W. H. Cree.

Mr. W. H. Cree, in pro. per. [417]

Los Angeles, California,
Thursday, January 30, 1941, 10 A. M.

The Court: A calendar matter?

The Clerk: Yes. In the Matter of Jack Dave Sterling, Bankrupt.

1. Further hearing on return of order of February 9, 1941, to George T. Goggin, Trustee, to show cause why the certificate of contempt filed December 31, 1941, should not be dismissed.

2. Hearing on return of order of January 13, 1941, to Bolsa Chica Oil Corporation, Thomas W. Simmons, Allan A. Anderson, H. H. McVicar, C. M. Rood, M. M. McCallen Corporation and W. H. Cree to show cause why they should not be adjudged in contempt pursuant to the certificate of the referee.

The Court: Proceed, gentlemen.

Mr. Dechter: Your Honor will recall that at the conclusion of the hearing the other day your Honor said he would consider the matter of the objection to the jurisdiction, and if the court desired any further argument by counsel you would so advise us. Now, I have some additional cases, if the court desires to have them.

The Court: I think I had better state my thought at the present time. I will hear further argument. Perhaps further argument may clarify my own thought, because I have not reached definite conclusions in the matter, so I sent [456] for the peti-

tion. I think the certificate of the referee should contain not merely the order, but the petition on which the order was made, because the violation which is charged is contempt. The certificate is like a selective judgment roll. In any judgment roll the petition or the complaint upon which the order was made is a necessary part of the record. So I sent for them. The question arose on a petition for instructions; is that correct?

Mr. Palette: That is correct.

The Court: The petition was filed on April 20, 1940, and on that petition the order to show cause was directed to Bolsa Chica Oil Corporation, and the hearing was had, as a result of which the order of May 5th was entered, which order has become final through the failure to petition for review by this court. [457]

The Court: Gentlemen, I have given a little further thought to this matter. In fact, I spent the entire noon hour in my chambers in going over the record in the case in the hope that there was some additional light I could find on the subject. And my conclusion is that we are dealing here not with a proposition where the bankruptcy court, not having the right to determine certain matters by summary proceedings, proceeds to determine them nevertheless, thus bringing into question the proposition whether the objector is bound by the record, the finality of which he did not see fit to challenge. I think the difficulty confronting us here arises from the fact that a situation like this does not seem to

have arisen in any of the cases which the industry of counsel and my own industry have [505] been able to discover.

I think it cannot be denied that in matters which come under Section 23 of the Bankruptcy Act, in controversies between a trustee and adverse claimants to property acquired or claimed by the trustee, the exception in subdivision (b) of that section applies. That is, where the trustee asserts a right to property the adversary, if he have possession of the property, need not submit to summary determination turn-over proceedings, but insist on a plenary action being brought, but if he does insist he may, by participating in a proceeding, perhaps waive his right to challenge jurisdiction, or by failing to properly raise the question may waive it, or by doing other acts which are tantamount to such a waiver.

Perhaps the case in which the strongest language is found to support the position of the trustee is *In re Murray*. I realize that much of the language that is used there is merely by way of theorizing, because ultimately the court disposes of the actual controversy in the very paragraph in which he states that *Murray* had not protected his rights; had practically waived them. I like pretty writing myself. I like to theorize. We are safer to do it in an article than to do it in an opinion. The court there, after giving the quotation from the *McDonald* case, says this:

“Here, appellant filed his answer to the show [506] cause order upon the merits. He volun-

tarily conveyed the property to the trustee in bankruptcy to abide the outcome of the hearing; he presented all of his evidence upon an accounting. It was too late for him thereafter for the first time to question the jurisdiction of the court over the subject matter. He had waived his personal privilege of demanding that the cause of action be asserted in a plenary proceeding. He must be held to have consented to the jurisdiction.”

So that even in those particular cases where the objection is not, to use the phrase from the municipal law, to the existence of the power but to the mode of its exercise there must be some strong affirmative action before consent to jurisdiction is presumed. And that is in line with the general proposition that there is no presumption in favor of jurisdiction in the federal courts, because they are courts of limited jurisdiction, made so by the Act of Congress of the United States, which began with 1789, and in subsequent legislative action they have simply declined to give to the federal courts the full constitutional jurisdiction, but have hamstrung our jurisdiction by diversity of citizenship and by requirements that the controversy be in excess of the value of \$3,000. [507]

This morning I gave some of the illustrations where the Supreme Court, in dealing with its own powerful jurisdiction, has declined to entertain actions in advance of actual controversy or harm ac-

tually done. Those cases, of course, include the declaratory judgment statute, but if we examine the famous case of *Ashwander v. Valley Authority*, 297 U. S. 288, we find that in that opinion the court reasserts that principle in each one of the cases I have cited. The court says, at page 324:

“The judicial power does not extend to the determination of abstract questions. * * * It was for this reason that the court dismissed the bill of the State of New Jersey which sought to obtain a judicial declaration that in certain features the Federal Water Power Act exceeded the authority of the Congress and encroached upon that of the State. *New Jersey v. Sargent*, 269 U. S. 328. For the same reason, the State of New York, in her suit against the State of Illinois, failed in her effort to obtain a decision of abstract questions as to the possible effect of the diversion of water from Lake Michigan upon hypothetical water power developments in the indefinite future. *New York v. Illinois*, 274 U. S. 488. At the last term the Court held, in dismissing the bill of the United States against the State of West Virginia, that general [508] allegations that the State challenged the claim of the United States that the rivers in question were navigable, and asserted a right superior to that of the United States to license their use for power production, raised an issue ‘too vague and ill-defined to admit of judicial determination.’ *United*

States v. West Virginia, 295 U. S. 463, 474. Claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention. Arizona v. California, 283 U. S. 423, 462.

"The Act of June 14, 1934, providing for declaratory judgments, does not attempt to change the essential requisites for the exercise of judicial power. By its terms it applies to 'cases of actual controversy', a phrase which must be taken to connote a controversy of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts."

I think it is well to review for the record how these proceedings were instituted. The defendants—we will call them defendants in this contempt proceeding—were not brought into court upon an allegation that a controversy existed between them and the trustee in regard to anything. That upon the affidavit of a geologist and upon the affidavit of the bankrupt and the verified petition, an order to show cause was issued. The verified petition merely stated: [509]

"That petitioner is informed and believes and on that ground alleges that the proposed course of redrilling said 'Petroleum Well' will cause the same to come within 100 feet of the 'Huntington Shore Well' of the above entitled bankrupt estate, which is situated on that certain real property in the County of Orange,

State of California, more particularly described as follows: * * * covered by Easement No. 309-21 granted by the State of California.

“That petitioner is further informed and believes and on that ground alleges that the surveys, as plotted, and their intersection with the inclined planes show that it will be impossible to redrill the ‘Petroleum Well’ without coming within 100 feet of the oil sands perforated by and from which production is obtained by the ‘Huntington Shore Well’, particularly at 3700 feet, 3800 feet, 3900 feet, and 4000 feet, and thereby causing infiltration of oil, mud, cement and other foreign substances, and that the same will result in irreparable damage to and possible loss of said ‘Huntington Shore Well’.”

Then was given the date that the Huntington Shore Well was placed on production and reference was made to the affidavits.

“Wherefore, your petitioner, by reason of the value of said well and the irreparable loss and [510] damage which will possibly result thereto by reason of the redrilling of the said ‘Petroleum Well’, desires that the court give instructions to said petitioner as to the action and proceedings which should be taken by the Trustee in Bankruptcy in the matter.”

The order to show cause merely stated that the Bolsa Chica Oil Corporation is ordered to appear

before the Referee in Bankruptcy and "show cause, if any it has, why such order or orders should not be made and entered by the above entitled court in the above entitled matter to protect the 'Huntington Shore Well' of the above entitled bankrupt estate from damage resulting from the redrilling of the 'Petroleum Well', and why such additional further and future order or orders should not be made and entered authorizing the Trustee in Bankruptcy to institute, maintain and prosecute any action, proceedings or suit in this or any other court which may, in the opinion of the Trustee in Bankruptcy, be necessary or advisable to protect the 'Huntington Shore Well' from damage as the result of the redrilling of the 'Petroleum Well'".

There is no allegation of any controversy or any demand having been made; merely that somebody examined the survey and is satisfied that it is likely to cause this damage as, if and when they drill in accordance with the plan. Neither the order to show cause intimated nor did the [511] petition intimate that an injunction would be asked to enjoin them from proceeding in the manner intended. The hearing was had. From the very beginning we find objection to the jurisdiction of the court to hear and determine the matter. I have read the beginning and the end of the transcript. And, in fact, sometimes when you have language read to you it sounds differently, so I sat on the couch and had Mr. Somers read to me the colloquy of counsel so that I could reproduce, as it were, what took place

before the Referee. And while there is some intimation at the end that some order might be agreed to, throughout the entire proceedings the Bolsa Chica Oil Corporation, respondent, protested the jurisdiction of the court to hear the matter, both upon the proposition that they were not before the court and upon the proposition that they are not trespassing anybody's property, that they intend to drill on their own property, and that the Referee in Bankruptcy had no right whatsoever to tell them, in advance of a commission of any tort, not to act with their property in a certain manner.

We are not dealing here with an adverse claim for property as between a trustee in bankruptcy and a stranger. That phase of the case is entirely eliminated. That is why all the teachings of these cases dealing with controversies relating to property and the waiver of any right thereto by consenting or not objecting to summary proceed- [512] ings, as set forth in patent law, do not help us at all. Here we are dealing with the right of a court of bankruptcy to hale before it, and on an order to show cause, a person who owns adjoining property and saying to him, "My trustee is asking for instructions." And when he comes into court he is confronted with the proposition, not upon the basis of what he is doing, but upon the basis of what happened to somebody else when somebody else tried to drill in the proximity of the land, and upon that basis he finds himself subject to an interdict,

by a court whose jurisdiction he has challenged throughout, not to deal with his own property in the manner in which he chooses on pain of contempt.

When we are dealing with that kind of property we are dealing with a mere fundamental right, and that is the right guaranteed by law to a person, subject to governmental regulation, of course, to use his property as he sees fit, being responsible for any damage when he does it.

There is no relation between the Bolsa Chica Oil Corporation and the bankrupt estate. They were not bound by any contract. It is true that they leased from the same State of California, but they did not have a pool agreement or any of those contracts which might give them reciprocal rights. They are just strangers dealing with their own property as they saw fit, subject to the rule not to damage another. [513]

Right from the beginning, and this is from page 2 of the transcript, we find this:

“Mr. Borden: At this time I would like to say we are here in obedience to the order to show cause. I am representing the Bolsa Chica Oil Corporation. While, of course, we concede your Honor’s authority to make any orders you may deem necessary with respect to directing the Trustee in his work, we do not concede any jurisdiction to make any order that would affect us in this proceeding, we not being a party

to the proceeding, but are appearing only specially here and are not submitting to the jurisdiction of the court.

“The Referee: You are objecting to the jurisdiction of the court to make any orders affecting your company?”

“Mr. Borden: Yes, your Honor.

“Mr. Dechter: May it please the court, even if that objection was well-founded this court must necessarily receive evidence to be able to rule on that objection. In other words, it must receive sufficient evidence to determine whether or not the court has summary jurisdiction.

“The Referee: Yes, I think that is true.”

Then Mr. Dechter asserts the power of the court, by summary order, to bind Bolsa Chica Oil Corporation. Then he used the analogy of a trustee operating a department store.

“The Referee: * * * I don't think this court would [514] have any jurisdiction to prevent this company or any other company from drilling a well, but if it interfered or threatened to interfere with the bankrupt's property in any way, I think to that extent the court would have jurisdiction.

“Mr. Borden: Under the very allegations of the petition, your Honor, it does not appear we are in any way trespassing upon the property of the bankrupt. In other words, we are

drilling from our own drill-site. We are not trespassing on their property according to the very allegations of the petition. I am not here to offer any objection or demurrer because we are appearing here objecting to the jurisdiction of the court.

“The Referee: Your objection may appear; however, the court must examine in a preliminary way this matter in order to determine whether or not it does have the jurisdiction.

“Mr. Borden: I appreciate that, your Honor.

“The Referee: Very well, you may proceed.”

I have gone into this rather fully, gentlemen, because it is a phase on which I have not expressed myself very fully and, also because, I am frank to say, I was strongly impressed at first with the thought that perhaps there was a consent decree here. But the more I study the decree the more I am convinced that that is not the case. I will go into that matter in a moment.

I want to show from the record, which is also before us [515] as a part of this, that there was not at any time any information that jurisdiction was being conceded and it was challenged at all times. When the cross examination began, I think the very first cross-examination, Mr. Borden made it very clear that by cross-examining the witness he was not waiving his objection to the jurisdiction.

I have lost the place where it occurred, but I find it again at the end, and the Referee confirmed the statement of Mr. Borden. On page 82 we find this:

“The Referee: Any further testimony?”

“Mr. Dechter: That is all for the petitioner, for the Trustee.

“Mr. Borden: I think I made the statement in the first instance that our cross-examination was not to be construed as any waiver of our objection to the jurisdiction.

“The Referee: Oh, yes.

“Mr. Borden: I don't think there is any question about that. We have no evidence to offer at the present time. I might have if there is any question in your Honor's mind whether or not the court, in a summary proceeding of this kind against a total stranger, and under these circumstances, has a right to take any action or to restrain us from proceeding. I should like to have a continuance in order to put on some testimony without conceding the jurisdiction of the court. I think the court is entitled to have the benefit, no matter what order it makes with respect to [516] directing the Trustee to commence plenary action or any other remedy available to him, of hearing testimony on both sides.”

Later on, when the question of the form of stipulation came up, on May 1st, we find this:

“The Referee: Have you accomplished anything in the matter of Jack Dave Sterling?”

“Mr. Rifkind: Yes, your Honor. We have reached a stipulation that an injunction may be issued by the court against the Bolsa Chica Oil Corporation. We have already given the specific language to the reporter and I would like him at this time to read it to the court.

“The Referee: Is the stipulation generally agreed to between counsel?”

“Mr. Borden: Yes.

“The Referee: You may state generally what it is.

“Mr. Borden: We have stipulated as to the order. We do not concede jurisdiction of the court. We are going to agree that we will not review the order of court and will be bound by the order. However, I make that statement because we do not want to generally concede jurisdiction.”

Then follows the statement of the Referee that as far as he is concerned you could review the order. Then the wording of the stipulation is read and nothing more seems to appear except general questions relating to the order [517] to be prepared.

Mr. Dechter: There is a further statement by Mr. Borden that the stipulation is agreeable.

The Court: Yes, that is right. This is what it says:

“Mr. Rifkind: All right.

“The Referee: Is that stipulation agreeable, gentlemen?”

“Mr. Borden: Yes.

“Mr. Rifkind: We will prepare an order.

“The Referee: Very well, prepare a formal order.

“Mr. Rifkind: It will be approved as to form and contents by both sides.”

Now, we get to the order itself and we find that unless we eliminate some phrases reserving jurisdiction it shows clearly on its face that jurisdiction was reserved. The only jurisdiction that was before the court is the jurisdiction to hear the matter and bind them by any kind of an order. That is what they are talking about. The order, of course, like all composite orders which are the result of compromise between counsel, is not a model. And, in my opinion, that is due to the fact that it was drawn by one side, and then additions were made. There are phrases here which could have been reworded and one or two which could have been eliminated and left the matter clearer than it is. In the first place, there is a recital here right from the very beginning, page 1, line 21:

“The Bolsa Chica Oil Corporation, upon the calling [518] of the matter, announced that it was appearing specially for the sole purpose of objecting to the jurisdiction of the court to make any order affecting said corporation;”

That is a challenge to the entire jurisdiction.

“that thereupon the court informed counsel that it would withhold ruling upon the question of jurisdiction until sufficient evidence was introduced to determine the question: That oral and documentary evidence was introduced upon the part of the Trustee in Bankruptcy and the witnesses called on behalf of the Trustee in Bankruptcy were cross-examined by the attorneys for the Bolsa Chica Oil Corporation; the Bolsa Chica Oil Corporation, having at the conclusion of the introduction of oral and documentary evidence upon behalf of the Trustee in Bankruptcy, stipulated in open court to the granting of the injunction as hereinafter more particularly set forth, the Bolsa Chica Oil Corporation stating that such stipulation was subject to the objection of the jurisdiction of the court”.

That is the objection heretofore made. They use the word “jurisdiction”; not the word “general”. Then, this is a phrase that could very well have been omitted, but it certainly does not detract from the preceding one: “and that such stipulation was not intended to confer general jurisdiction on the court.” The use [519] of the word “general” there is not an absolute one, but it merely states negatively what is already stated positively, that the stipulation merely related to the form of the order

to be made. The defendant insisted then, as he had before, that they did not concede jurisdiction.

Incidentally, there is another paragraph here, before the adjournment on the last date. Mr. Borden made this statement, which appears on page 85, after the discussion as to distance:

“Mr. Pallette: I wouldn’t be surprised but what we could stipulate to one hundred feet, but I don’t think I am justified in doing so without consulting our engineers.

“Mr. Borden: I think that is a good idea. Let the record show, if your Honor please, that by suggesting that we are willing to submit to the jurisdiction of the court, that we do not do so until we actually do so.”

In other words, he just says, “Perhaps I will agree to it or not object to it, but I am still not ready to do it and may insist upon my point of jurisdiction.”

Referring back to the order:

“The court having been fully advised in the premises and the court having overruled the objection of the Bolsa Chica Oil Corporation to the jurisdiction of the court, it is, therefore, ordered as follows:

Now, there is a notation here, “Approved as to form and contents.” The form does not comply with our rule. [520] The form provided by the rule is merely, “Approved as to form.” And *is* counsel

desire to waive objection to the matters other than form then they have to write in the direct words, "No objection to the entry of the order," or words of similar import. So I do not think that adds anything to it, because I am satisfied of the reservation, in a rather round-about manner, of jurisdiction. It is absolutely apparent and I do not think anybody was deceived by it.

There is one other proposition we must bear in mind. Counsel have stated repeatedly that this is a collateral attack. This is not a collateral attack. This is a direct attack. A citation for contempt is a direct proceeding arising ancillary to another, and when you attack an invalid order in a contempt proceeding you are attacking it directly; not collaterally. In other words, a man need not submit to an order or go to the trouble of an appeal from an order of court which he challenges is without jurisdiction. If the order is void because of lack of jurisdiction he can attack it any time. Orders are repeatedly made that way. What is that habeas corpus case?

Mr. Palette: Rowland?

The Court: I have even a more constructive case, gentlemen, and one that to my mind, unless our ideas of [521] courts change more rapidly than even I would like to see them change, is still good law. It is fundamental that you are not bound to obey an order that is invalid. You may disobey it and then, in a proceeding based on it, you may at-

tack its validity, for this reason: The person who cites you for contempt brings the order into court. It is the basis of the order and you are not attacking it collaterally when you say, "This is not a valid order." You are challenging the foundation for the citation, a foundation which they must establish exists. Therefore, an attack, either by habeas corpus after conviction or in any other manner in a contempt proceeding, of the order made in the main proceedings is a direct attack. *Ex Parte Sawyer* is, to my mind, the most interesting that I have been able to find on that point. I went at it backwards. I started with about 280 and examined about 7 or 8 cases, working backwards. I found it as the leading case on the subject and the best case under the law. *Ex Parte Sawyer*, 124 U. S. 200 decided in 1888 and cited repeatedly since, is one of the cases cited by Mr. Justice Holmes in one of the late cases on the subject. And I am quite sure that such a liberal as Mr. Justice Holmes would not have approved the doctrine if he felt it did not correctly express his views of civil rights. In this case the City Council of Lincoln, Nebraska, was about to remove from office a police judge upon the ground that he had illegally kept some fees. [522] So the police judge, Albert F. Parsons, went before the federal District Court on the circuit side—that was at a time when our courts were divided into district courts and circuit courts, personified in the same judge; the one court heard law and

jurisdiction cases and the other heard equity cases—and alleged the fact that the City Council was about to meet for the purpose of removing him from office. Upon the basis of that sworn petition and affidavit he secured an injunction enjoining the mayor and City Council from holding the meeting. They disobeyed the order, and held the meeting, and removed the police judge. So the police judge went before the court and satisfied the court that his dignity had been outraged and flaunted and that they had robbed him of a lawsuit which he had alleged was within the jurisdiction of the federal court, because he was being deprived of rights under the constitution, the due process and constitutional laws of the United States. An order to show cause was sent to the mayor and council and the judge promptly found them all guilty of contempt of court and fined them in sums ranging from \$50 to \$600 which, of course, at that time was a lot of money, or stand committed to the custody of the marshal until the fines were paid. They declined to pay and were committed to the marshal. Whereupon a writ of habeas corpus was sued out on behalf of the contenders, and in the petition for writ of habeas corpus it [523] was alleged:

“That the court had no jurisdiction of said suit commenced by said Albert F. Parsons against your petitioners, and that said restraining order was not a lawful order, and that said judgment of said court that your petitioners

were in contempt, and the sentence of said court, that your petitioners pay a fine and suffer imprisonment for violating said restraining order is void and wholly without the jurisdiction of the Circuit Court of the United States, and in violation of the Constitution of the United States'; and further alleged 'as special circumstances, making direct action and intervention of this court necessary and expedient, that it would be useless to apply to the Circuit Court of the United States for the District of Nebraska for a writ of habeas corpus, because both the circuit and district judges gave it as their opinion in the contempt proceedings that the said restraining order was a lawful order and within the power of the court to make.' "

So they appealed, in the language of the famous bishop, from the guardians of the God's truth direct to the God himself. They appealed to the highest court.

Mr. Dechter: The mayor and the councilmen had never appeared in the injunction proceeding and it was an *ex parte* injunction against them. [524]

The Court: But they were served with the process.

Mr. Dechter: That is what the Supreme Court points out in this case of Chicot County Drainage District.

The Court: Well, I will let you make new law on this case. I want to see if you can send a man to

jail or penalize him thousands of dollars because of his failure to appeal. You can't show me any law and you haven't so far shown me any law to the effect that if a man challenges the jurisdiction of a court his only recourse is appeal.

Mr. Dechter: That is what the three Supreme Court decisions hold.

The Court: They don't say that as I read them. You read them differently than I do.

Mr. Dechter: The jurisdiction over the subject matter was challenged.

The Court: I don't reconcile this with the other. I think this is a contempt proceeding of much greater weight. It is based on the constitutional ground that nobody is required to obey an order of a court that is without jurisdiction of the subject matter.

Here was a federal court. Its jurisdiction was invoked in a State matter. This is exactly what the court said. In discussing the problem of whether there was jurisdiction, civil or criminal in nature, Mr. Justice Gray said:

“But if those proceedings are to be considered as neither criminal nor judicial, but rather in the [525] nature of an official inquiry by a municipal board intrusted by the law with the administration and regulation of the affairs of the city, still, their only object being the removal of a public officer from his office, they are equally beyond the jurisdiction and control of a court of equity.

“The reasons which preclude a court of equity from interfering with the appointment or removal of public officers of the government from which the court derives its authority apply with increased force when the court is a court of the United States and the officers in question are officers of a State.” I am omitting.

“In any aspect of the case, therefore, the Circuit Court of the United States was without jurisdiction or authority to entertain the bill in equity for an injunction.

“As this court has often said: ‘Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise its judgment until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.’ Citing cases. [526]

“We do not rest our conclusion in this case, in any degree, upon the ground suggested in argument; that the bill does not show a matter in controversy of sufficient pecuniary value to support the jurisdiction of the circuit court; because an apparent defect of its jurisdiction in this respect, as in that of citizenship of parties, depending upon an inquiry into facts which might or might not support the jurisdiction, can be availed only by appeal or writ of

error, and does not render its judgment or decree a nullity.”

Citing cases.

“Neither do we say that in a case belonging to a class or subject which is within the jurisdiction both of courts of equity and of courts of law, a mistake of a court of equity, in deciding that in the particular matter before it there could be no full, adequate and complete remedy at law, will render its decree absolutely void.

“But the ground of our conclusion is that whether the proceedings of the City Council of Lincoln for the removal of the police judge, upon charges of misappropriating moneys belonging to the city, are to be regarded as in their nature criminal or civil, judicial or merely administrative, they relate to a subject which the Circuit Court of the United States, [527] sitting in equity, has no jurisdiction or power over, and can neither try and determine for itself, nor restrain by injunction the tribunals and officers of the State and city from trying and determining.

“The case cannot be distinguished in principle from that of a judgment of the Common Bench in England in a criminal prosecution, which was *coram non iudice*; or the case of a sentence passed by the Circuit Court of the United States upon a charge of an infamous

crime, without a presentment or indictment by a grand jury.”

Citing cases.

“The circuit court being without jurisdiction to entertain the bill in equity for an injunction, all its proceedings in the exercise of the jurisdiction which it assumed are null and void. The restraining order, in the nature of an injunction, it had no power to make. The adjudication that the defendants were guilty of a contempt in disregarding that order is equally void; their detention by the marshal under that adjudication is without authority of law, and they are entitled to be discharged.”

It is interesting to read a concurring opinion of Mr. Justice Field:

“I concur in the judgment of the court, that the Circuit Court of the United States had no jurisdiction [528] to interfere with the proceedings of the Mayor and Common Council of Lincoln for the removal of the police judge of that city. The appointment and removal of officers of a municipality of a State are not subjects within the cognizance of the courts of the United States. The proceedings detailed in the record in the present case were of such an irregular and unseemly character, and so well calculated to deprive the officer named of a fair hearing, as to cause strong comment. But, however irregular and violent, the remedy

could only be found under the laws of the State and in her tribunals. The police judge did not hold his office under the United States, and in his removal the Common Council of Lincoln violated no law of the United States." * * *

I cannot see any distinction between the situation we have here, except a different charge of illegality, and the situation we have here. The record here clearly shows that what the bankruptcy court proceeded to do was to declare in advance of the commission of a tort, that a tort was about to be committed, and enjoined its commission. I doubt very much that even under the declaratory judgment statute such a declaration could be enforced. The other day I referred to an English case upon the subject, the case of *Thomas vs. Moore*, 1 Kings Bench 555. In that case a conspiracy had been alleged. [529] No damages as a result of the conspiracy were assessed. The trial judge, however, granted a declaration. The court, in dismissing the judgment and entering one for the defendants used this language:

“It may be convenient to have a claim for a declaration as to the rights of the parties in respect of contracts extending over a long space of time, and not to wait until there is a breach to have the rights determined. But I have never heard of a declaration that a defendant is doing wrong, unless perhaps it is followed by a statement that damage has accrued or is likely

to accrue, and that the defendant threatens to continue his wrongful act against the plaintiff. The claim was for damages for conspiracy, and no damage was proved. The two judgments cannot stand together, and judgment must be entered for all the defendants on the claim or conspiracy.” [530]

Under the law of California it is a complete defense to an action if it is prematurely brought. In fact, we have a section of the code that deals with it, and the Supreme Court, in interpreting it, has held repeatedly that it is a complete defense.

I call attention to the Ashwander case. And I will call your attention to a recent opinion of my own, *Redlands Foothill Groves v. Jacobs*, 30 Fed. Supp., 995, in which, in declining to interfere with the enforcement of the Wage and Hour Act, in so far as it applies to agriculture, I used this language:

“Courts have refused to give relief under it when there was not an actual threat of injury, but merely a fear or apprehension of damages.”

Mr. Dechter: I don't want to appear impertinent, may it please the court, but in this *Stoll v. Gottlieb* case, *Ex Parte Sawyer* was cited by the losing side and disregarded by Justice Reed and the rest of the court.

The Court: Well, they did not distinguish it. It is very seldom that I am bothered with questions of jurisdiction as I have been bothered in this case, and the reason why it is so important in this case

is quite apparent from its very nature. This order, in addition to enjoining the defendants, also gave authority to the trustee to institute action for damages or for injunctive relief. They were brought here on a contempt citation [531] and it was insisted that the court penalize them for the violation of this injunction of the court. In other words, the court has power to impose a fine and impose it by way of damages, then allow the estate later on to assess additional damages for the loss caused by the acts themselves after the court had imposed the penalty for violation of its interdict. The courts lately have scrutinized records and have raised questions relating to jurisdiction when the thought never occurred to counsel and was never even suggested by counsel to the court below. I feel, in a case of this character, where the challenge over jurisdiction has been made, the court should inquire into it. I am satisfied that the court has no jurisdiction whatsoever and that their appearance and response to an order to show cause, which they have to obey under penalty of having default taken against them, didn't constitute a waiver. And if, as I believe, it is beyond the power of the bankruptcy court to, in effect, make a declaration that unless the well is drilled in a certain way damage will result and the man will be enjoined from doing something on his own property, property which is not the subject of bankruptcy, his actions therein, in the failure to review, does not involve a waiver on his part.

I take it as an uncontroverted proposition that an invalid order, issued against a person in a proceeding to which he may have been an adversary and to which he objected, [532] can be attacked in two ways: That is, one, by appealing and, two, by not appealing and challenging it as being void and showing it is void. And that such an act is not a collateral attack but a direct attack because, after all, when you actually base a citation upon an order you bring up the order yourself, and any showing of invalidity which appears on the face of the record is available in the matter.

Rather than send these back to the Referee I shall order the clerk to make the petition and the order a part of the record in this proceeding. They should have been included in the certificate of the Referee so that there would be a showing of the basis upon which the order was made. These constitute the pleadings upon which the order was made.

Mr. Dechter: Exception noted by the trustee. As I understand it, in order to make the record clear, the court sustains the objection to the jurisdiction?

The Court: Yes.

Mr. Dechter: And refuses to hear the matters raised on the order to show cause in regard to the contempt, by reason of its sustaining the objection to the jurisdiction.

The Court: Yes. You can go to the court and get a mandamus.

Mr. Dechter: I also want to make clear that by its [533] order the court is vacating the injunction heretofore made. I don't believe that is involved in this proceeding, except indirectly.

The Court: I am making a finding that it is void on its face.

Mr. Dechter: Then I would like to ask this court to exercise its power as a Chancellor in Equity to stay the effect of its order stating that it is an invalid order pending an appeal, so that our rights are protected in the meantime. On behalf of the Trustee I would ask that that, at least, be given. We will be diligent in prosecuting the necessary steps on appeal.

The Court: There should be a formal order here upon this hearing. I do not know whether a formal objection—

Mr. Dechter: A verbal objection was made here. There was no written objection.

The Court: I know there was no written objection.

Mr. Dechter: I am willing to have counsel prepare the order and submit it to me, or I will be glad to prepare it and submit it to him, whichever the court desires.

Mr. Pallette: I think we should prepare it.

Mr. Dechter: May it be submitted to me before it is signed?

The Court: Yes. I think it is no more than right that in a matter of this character you—

Mr. Dechter: In other words, this is the most valuable [534] asset of the estate. If this is lost it means about \$400,000.

The Court: I will call your attention to this about mandamus: The Circuit Court has recently used some very strong language in regard to a case that arose in my department where I dismissed a complaint and, rather than appeal, they sought to mandamus me to restore it and hear the matter on its merits. However, this is a little different matter.

Mr. Dechter: I will be glad to do both, your Honor. In other words, I have no desire to——

The Court: It might have been the line of least resistance for me to have heard the evidence. It wouldn't have given me nearly the trouble. I have worked very hard on it and I am very thoroughly convinced that it would be a broad extension of the powers of the bankruptcy court if we were to determine that it could issue injunctions of this character.

(Discussion off the record.)

The Court: It is rather a departure from the rules to require a bond of a trustee. I can see where a matter of this kind may result in a good deal of damage to the parties, but I will give the matter further thought, gentlemen, at the time you present the order. Leave the question of the bond open, leave a blank there, or draw an order in the alternative, one with bond and one without bond. [535]

Mr. Rifkind: That order is to be presented to counsel before being signed by your Honor?

The Court: Oh, yes.

[Endorsed]: Filed March 13, 1941. R. S. Zimmerman, Clerk. [536]

[Endorsed]: No. 9790. United States Circuit Court of Appeals for the Ninth Circuit. George T. Goggin, Trustee in Bankruptcy of the Estate of Jack Dave Sterling, Bankrupt, Appellant, vs. Bolsa Chica Oil Corporation, a corporation, Thos. W. Simmons, Allan A. Anderson, William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 14, 1941.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9790

In the Matter of

JACK DAVE STERLING,

Bankrupt.

STATEMENT OF POINTS UPON WHICH APPELLANT WILL RELY IN THIS APPEAL

1. The District Court erred in rendering the order dismissing the Referee in Bankruptcy's Certificate of Contempt.

2. The District Court erred in sustaining objections to the jurisdiction of the District Court to hear the matter arising under the Referee's Certificate of Contempt.

3. The District Court erred in permitting a collateral attack to be made upon the jurisdiction of the Referee to render the injunction, (the violation of which was the basis of the Referee's Certificate of Contempt), said injunction having become final, and no appeal or other manner of review permitted by law having been taken therefrom.

4. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt) for the reason that the bankruptcy court is a court of equity and as such has inherent power to enjoin threatened harm to,

or interference with, the property in custody of the bankruptcy court.

5. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt) for the reason that the bankruptcy court is given power, under Section 2(15) of the Bankruptcy Act of 1938 to enjoin any threatened harm to, or interference with, the property in custody of the bankruptcy court.

6. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt), for the reason that respondents are estopped from asserting such objections by virtue of their having submitted themselves to the jurisdiction of the bankruptcy court by stipulating that the injunction might be entered against them, by cross-examining the witnesses and otherwise participating in the proceedings against them.

7. The District Court erred in sustaining objections to the jurisdiction of the Referee to issue the injunction (the violation of which was the basis for the Certificate of Contempt) for the reason that respondents are estopped from asserting such objections by virtue of their having failed to take an appeal or review from the injunctive proceedings before the Referee.

8. The District Court erred in failing to hold that any purported reservation of jurisdictional ob-

jections by the respondents was waived and nullified by the effect of the general appearance made by respondents in stipulating that the injunction might be entered against them and by approving the order of injunction not only as to form but as to contents as well.

9. The District Court erred in not considering the Certificate of the Referee and not hearing any evidence offered in addition thereto, because said evidence would have shown that respondents interfered with the property in the custody of the bankruptcy court and did so wilfully and intentionally, and with full knowledge of the harm being done the property in custody of the bankruptcy court; and that such conduct constitutes contempt of court even had there been no injunction.

Dated this 11th day of April, 1941.

RAPHAEL DECHTER &

JOSEPH J. RIFKIND

By R. DECHTER

Attorneys for Appellant

Receipt of copy of the within instrument is acknowledged this 11th day of Apr., 1941.

OVERTON, LYMAN & PLUMB

By E. RINGE

[Endorsed]: Filed Apr. 14, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Appellant herein designates the following portions of this record, proceedings and documents to be contained in the record on appeal:

1. Debtor's Petition under Section 74 of the Bankruptcy Act, filed on October 14, 1935.

2. Order approving Debtor's petition under Section 74 of the Bankruptcy Act, filed on October 14, 1935.

3. Petition by debtor for adjudication, filed November 23, 1935.

4. Adjudication and order of reference filed November 26, 1935.

5. Reference to the Honorable Ernest R. Utley, filed April 1, 1936.

6. Order Appointing Hubert F. Laugharn as Trustee in Bankruptcy filed January 6, 1936.

7. Order appointing George T. Goggin as Trustee in Bankruptcy, filed January 7, 1941.

8. Petition of Trustee for instructions relative to Huntington Shore Well, filed April 20, 1940.

9. Order to show cause on Bolsa Chica Oil Corporation, filed April 20, 1940.

10. Affidavit of Vernon L. King in connection with the petition for instructions relative to Huntington Shore Well, filed April 20, 1940.

11. Affidavit of Jack Dave Sterling in connection with petition for instructions relative to Huntington Shore Well, filed April 20, 1940.

12. Exhibits introduced in evidence before the Referee in the proceedings of April 26, 1940 and May 1, 1940, said exhibits being described as follows:

No. 1—Certified copy of regulations covering the re-drilling operations of wells.

No. 2—Document entitled “Easement 309, Huntington Beach”.

No. 3—Memorandum.

No. 4—Agreement between the Huntington Beach Townsite Association, by the Huntington Shore Oil Company.

No. 5—Plat showing Huntington Shore Well and Bolsa Chica Well courses.

13. Injunction against Bolsa Chica Oil Corporation, et al., filed May 15, 1940.

14. Petition to have Bolsa Chica Corporation, et al., certified for contempt, filed August 22, 1940.

15. Order to Show Cause on Petition to have Bolsa Chica Oil Corporation, et al., certified for contempt, filed August 22, 1940.

16. Certificate of Contempt dated December 30, 1940.

17. Motion of Bolsa Chica Oil Corporation, et al, for an order to show cause why the Certificate of Contempt should not be dismissed, filed January 9, 1941.

18. Order to Show Cause on Motion of Bolsa Chica Oil Corporation, et al, relative to Certificate of Contempt, filed January 9, 1941.

19. Order to Show Cause in re contempt against

Bolsa Chica Oil Corporation, filed January 13, 1941.

20. Minute Order of District Judge dated January 30, 1941.

21. Order re Certificate of Contempt filed January 7, 1941.

22. Notice of Appeal, filed February 13, 1941.

23. Directions to Clerk of District Court for notification of filing of Notice of Appeal and mailing copies thereof to all parties to the judgment, filed February 13, 1941.

24. Pages 83 to 92, inclusive, of Reporter's Transcript of April 26, 1940 and May 12, 1940, of proceedings in re order to show cause on the petition of the Trustee for instructions, before the Referee.

25. Order extending time to docket appeal.

26. Statement of points upon which Appellant intends to rely in this appeal.

27. This Designation of Contents of record on appeal.

Dated: April 11th, 1941.

RAPHAEL DECHTER &

JOSEPH J. RIFKIND

By R. DECHTER

Attorneys for Appellant

Receipt of copy of the within instrument is acknowledged this 11th day of Apr., 1941.

OVERTON, LYMAN &

PLUMB

By E. RINGE

[Endorsed]: Filed Apr. 14, 1941. Paul P. O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9790

GEORGE T. GOGGIN, as Trustee in Bankruptcy
in the Matter of JACK DAVE STERLING,
Bankrupt,

Plaintiff,

vs.

BOLSA CHICA OIL CORPORATION, et al,
Defendants.

COUNTER-DESIGNATION OF CONTENTS OF
RECORD ON APPEAL BY APPELLANT

Comes now the appellant, George T. Goggin, as Trustee in Bankruptcy of the Estate of Jack Dave Sterling, Bankrupt, and in response to the designation of contents of record on appeal of appellees, files this counter-designation of contents of record on appeal to be contained in the record on appeal, in addition to the records, proceedings and documents heretofore designated by appellant and appellees:

1. All exhibits introduced in evidence in the proceedings before the Referee on September 26, September 30 and October 1, 1940;

2. All exhibits introduced in evidence in the proceedings before the Referee on April 26, 1940 and on May 1, 1940;

3. The following portions of the Reporter's Transcript of proceedings in re: Trustee vs. Bolsa

Chica Oil Corporation, of September 26, September 30 and October 1, 1940, before the Referee:

- (a) Page 29, line 4 to page 30, line 2, inclusive.
- (b) Page 34, line 21 to page 35, line 24, inclusive.
- (c) Page 38, line 22 to page 40, line 7, inclusive.
- (d) Page 40, line 14 to page 44, line 3, inclusive.
- (e) Page 45, lines 8 to 21 inclusive.
- (f) Page 56, lines 2 to 22 inclusive.
- (g) Page 58, line 1 to page 59, line 20, inclusive.
- (h) Page 59, line 24 to page 62, line 6, inclusive.
- (i) Page 63, line 17 to page 64, line 2, inclusive.
- (j) Page 66, line 8 to page 67, line 9, inclusive.
- (k) Page 67, lines 17 to 26 inclusive.
- (l) Page 159, line 12 to page 165, line 4, inclusive.

4. The following portions of the Reporter's Transcript of proceedings on hearing before the Honorable Leon R. Yankwich on January 30, 1941:

- (a) Page 2, line 1 to page 3, line 15, inclusive.
- (b) Page 78, line 24 to page 80, line 5, inclusive.

5. This counter-designation.

Dated: April 19, 1941.

RAPHAEL DECHTER and
JOSEPH J. RIFKIND
By R. DECHTER

Attorneys for Appellant.

[Title of Circuit Court of Appeals and Cause.]

(AFFIDAVIT OF SERVICE BY MAIL—
1013a, C. C. P.)

State of California

County of Los Angeles—ss.

E. Zaringer, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 633 Subway Terminal Bldg., 417 So. Hill St., Los Angeles, California; that on the 19th day of April, 1941, affiant served the within Counter-Designation of Contents of Record on Appeal by Appellant on the.....in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said appellees, at the office address of said attorneys, as follows: (Here quote from envelope name and address of addressee.) "Messrs. Eugene Overton, Warren S. Palette, and Donald H. Ford, Attorneys at Law, 733 Roosevelt Bldg., Los Angeles, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney..... for the person..... by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, or there is a regular

communication by mail between the place of mailing and the place so addressed.

E. ZARINGER

Subscribed and sworn to before me this 19th day of April, 1941.

[Seal]

JESSIE DOLFIN

Notary Public in and for the County of Los Angeles, State of California.

[Title of Circuit Court of Appeals and Cause.]

(AFFIDAVIT OF SERVICE BY MAIL—
1013a, C. C. P.)

State of California

County of Los Angeles—ss.

E. Zaringer, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 633 Subway Terminal Bldg., 417 So. Hill St., Los Angeles, California; that on the 19th day of April, 1941, affiant served the within Counter-Designation of Contents of Record on Appeal by Appellant on the appellees in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said appellees at the office address of said attorneys, as follows: (Here quote from envelope name and address of addressee.) "Elizabeth R. Hensel, Esq., 410

Park Central Bldg., Los Angeles, California, Wm. H. Cree, Esq., 1216 Security Bldg., Long Beach, California"; and by then sealing said envelope and depositing the same, with postage thereon fully pre-paid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney..... for the person..... by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

E. ZARINGER

Subscribed and sworn to before me this 19th day of April, 1941.

[Seal] JESSIE DOLFIN

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Apr. 21, 1941. Paul J. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL BY APPELLEES M. M. Mc-
CALLEN CORPORATION, H. H. McVICAR,
C. M. ROOD AND WILLIAM H. CREE.

Appellees M. M. McCallen Corporation, H. H. McVicar, C. M. Rood and William H. Cree, certain of the appellees in the above entitled proceedings,

designate the following portions of the record, proceedings and documents to be contained in the record on appeal, in addition to the records, proceedings and documents heretofore designated by appellant and by appellees Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson:

1. Exhibits introduced in evidence before the Referee in the proceedings of September 26, September 30 and October 1, 1940, said exhibits being described as follows:

Exhibit 3. Drilling and operating agreement between Bolsa Chica Oil Corporation and M. M. McCallen Corporation dated August 14, 1940.

Exhibit 4. Assignment of oil and gas lease dated August 14, 1940 from Bolsa Chica Oil Corporation to M. M. McCallen Corporation.

2. This designation.

Dated: April 18, 1941.

WILLIAM H. CREE

ELIZABETH R. HENSEL

By ELIZABETH R. HENSEL

Attorneys for Appellees

M. M. McCallen Corporation,

H. H. McVicar, C. M. Rood

and William H. Cree.

Received copy of the within this 18th day of April, 1941.

R. DECHTER

By H. WEBSTER

Attorney for Trustee.

Received copy of the within this 18th day of April, 1941.

OVERTON, LYMAN & PLUMB
Attorneys for Appellees
Bolsa Chica et al.

[Endorsed]: Filed Apr. 21, 1941. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL BY APPELLEES BOLSA
CHICA OIL CORPORATION, THOS. W.
SIMMONS AND ALLAN A. ANDERSON.

Appellees Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson, certain of the appellees in the above entitled action, designate the following of the record, proceedings and documents to be contained in the record on appeal, in addition to the record, proceedings and documents heretofore designated by appellant:

1. Order authorizing suit against Bolsa Chica Oil Corporation in the state court, filed September 20, 1940.

2. Petition (and attached exhibit) for leave to sue Bolsa Chica Oil Corporation in the state court, filed September 20, 1940.

3. Affidavits of Warren S. Palette and Donald H. Ford attached to the motion of Bolsa Chica Oil Corporation for an order to show cause why a cer-

tificate of contempt should not be dismissed, filed January 9, 1941.

4. The following portions of the Reporter's Transcript of Proceedings in re: Order to Show Cause Re: Petition for Instructions of April 26 and May 1, 1940 before the Referee:

(a) Page 2, line 4 to page 4, line 21, inclusive.

(b) Page 24, lines 22 to 26, inclusive.

(c) Page 82, line 8 to page 83, line 1, inclusive.

5. The following portions of the Reporter's Transcript of Proceedings in Re: Trustee vs. Bolsa Chica Oil Corporation of September 26, September 30 and October 1, 1940, before the Referee:

(a) Page 2, lines 1 to 19, inclusive.

(b) Page 10, line 21 to page 24, line 14, inclusive.

(c) Page 28, lines 14 to 17, inclusive.

6. The following portions of the Reporter's Transcript of Proceedings on Hearing before the Honorable Leon R. Yankwich of January 30, 1941:

(a) Page 51, line 13 to page 82, line 3, inclusive.

7. This designation.

Dated: April 18, 1941.

EUGENE OVERTON

WARREN S. PALLETTE

DONALD H. FORD

By DONALD H. FORD

Attorneys for Appellees

Bolsa Chica Oil Corporation,

Thos. W. Simmons and

Allan A. Anderson.

Received copy of within April 18, 1941.

ELIZABETH R. HENSEL
Attorney for Certain Appellees.

Received copy of the within this 18th day of
April, 1941.

R. DECHTER
By H. WEBSTER
Attorney for Trustee.

[Endorsed]: Filed Apr. 21, 1941. Paul J. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

COUNTER-DESIGNATION OF CONTENTS OF
RECORD ON APPEAL BY APPELLEES
BOLSA CHICA OIL CORPORATION,
THOS. W. SIMMONS AND ALLAN A.
ANDERSON.

Appellees Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson, certain of the appellees in the above entitled action, because of the new matter contained in the counter-designation of contents of record on appeal by appellant, designate the following of the record, proceedings and documents to be contained in the record on appeal, in addition to the record, proceedings and documents heretofore designated by appellant in his original designation and in his counter-designation and in addition to the record, proceedings and documents heretofore designated by appellees M. M. McCallen

Corporation, H. H. McVicar, C. M. Rood and William H. Cree and these appellees:

1. The following portions of the Reporter's Transcript of Proceedings in Re: Trustee vs. Bolsa Chica Oil Corporation of September 26, September 30 and October 1, 1940, before the Referee:

(a) Page 54, line 22 to page 55, line 12, inclusive. (Testimony of witness Earl Ross.)

(b) Page 71, line 14 to page 72, line 1, inclusive. (Testimony of witness Vernon King.)

(c) Page 74, line 1, to page 80, line 9, inclusive. (Testimony of witness Vernon King.)

(d) Page 81, lines 21 to 23, inclusive. (Testimony of witness Vernon King.)

(e) Page 170, line 4, to page 176, line 16, inclusive. (Testimony of witness Allan A. Anderson.)

(f) Page 212, line 12, to page 218, line 4, inclusive. (Testimony of witness Allan A. Anderson.)

2. This counter-designation.

Dated: April 22, 1941.

EUGENE OVERTON

WARREN S. PALLETTE

DONALD H. FORD

By DONALD H. FORD

Attorneys for Appellees

Bolsa Chica Oil Corporation,

Thos. W. Simmons and

Allan A. Anderson.

Received Counter-Designation of Contents of Record this 22nd day of April, 1941.

ELIZABETH R. HENSEL

By RITA L. STONE

Attorney for Appellees M. M.
McCallen Corporation, H. H.
McVicar, C. M. Rood and
William H. Cree.

Received copy of the above this 22nd day of April, 1941.

RAPHAEL DECHTER

By H. WEBSTER

Attorney for Trustee.

[Endorsed]: Filed Apr. 24, 1941. Paul P. O'Brien,
Clerk.

